

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

3 VOXER, INC. and VOXER IP LLC,) AU:20-CV-00655-LY
4 Plaintiffs,)
5 v.) AUSTIN, TEXAS
6 META PLATFORMS, INC., f/k/a)
FACEBOOK, INC., and INSTAGRAM LLC,)
7 Defendants.) SEPTEMBER 13, 2022

TRANSCRIPT OF JURY TRIAL

VOLUME 2

BEFORE THE HONORABLE LEE YEAKEL

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14:16:22 1 (Open court, no jury)

14:16:22 2 THE COURT: Couple of quick notes before we get

14:16:23 3 started with opening statements. Back to what we talked about

14:16:27 4 yesterday afternoon, Meta is going to reply to the brief that

14:16:30 5 was filed by Voxer; is that right?

14:16:32 6 MR. JONES: That's right, Your Honor.

14:16:33 7 THE COURT: About when?

08:39:05 8 MR. JONES: Nine o'clock tomorrow morning, if that's

08:59:57 9 convenient for the Court.

09:04:44 10 THE COURT: That's fine. I'm going to grant Voxer's

09:04:47 11 motion on, for want of a better word, logistically how we're

09:04:57 12 handling this with the redacted copy and what can be used.

09:05:01 13 Basically, the original sealed, and the redacted copy of the

09:05:07 14 motion will be what's in the file.

09:05:08 15 MR. POWELL: Thank you, Your Honor. Plaintiff would

09:05:09 16 request, then, permission to recall Mr. Katis after his direct

09:05:17 17 examination today, because the issues in this motion are for

09:05:19 18 his testimony, and he's our first witness.

09:05:22 19 THE COURT: No. As I indicated yesterday, until we

09:05:23 20 got through this part of it, I'm happy to juggle witnesses. So

09:05:34 21 if I were to reconsider previous rulings, you'll be able to

09:05:38 22 recall him as a witness.

09:05:39 23 MR. POWELL: Thank you very much, Your Honor.

09:05:43 24 THE COURT: So with that, are we ready to proceed

09:05:45 25 this morning?

09:05:45 1 MR. STONE: We're ready to proceed, Your Honor.

09:05:48 2 MR. VAN NEST: We're ready, Your Honor.

09:05:52 3 THE COURT: All right. You may bring in the jury.

09:05:54 4 (Open court, jury present)

09:05:58 5 THE COURT: Good morning, ladies and gentlemen.

09:05:58 6 Please be seated.

09:05:58 7 Our first order of business today will be opening

09:06:01 8 statements. So is the plaintiff ready to proceed with the

09:06:06 9 plaintiff's opening statement?

09:06:07 10 MR. STONE: We are, Your Honor.

09:06:08 11 THE COURT: You may proceed.

09:06:09 12 **PLAINTIFF'S OPENING STATEMENT**

09:06:09 13 MR. STONE: Thank you, Your Honor. May it please the

09:06:11 14 Court:

09:06:11 15 Good morning, ladies and gentlemen. I'm Robert

09:06:14 16 Stone, one of the lawyers representing Voxer in this trial.

09:06:15 17 And, together with my team, we're pleased to present Voxer's

09:07:04 18 case against Facebook and Instagram to you. Now, we all know

09:07:08 19 that jury service at times can be an inconvenience, but this

09:07:11 20 dispute is very important to our client and we all greatly

09:07:14 21 appreciate your time.

09:07:15 22 Now, you may hear this is a bit of a surprise, but we

09:07:18 23 often hear that jurors actually enjoy themselves, learning how

09:07:23 24 our system works and being involved in resolving patent cases.

09:07:27 25 And while I can't promise that everything will be as

09:07:32 1 entertaining as the Texas-Alabama game was this past weekend,
09:07:40 2 at least up until the last field goal, I can promise you that
09:07:43 3 we will be respectful of your time.

09:07:45 4 Now, what I'm going to do this morning is give you a
09:07:49 5 road map for what the evidence in this case will show, and that
09:07:52 6 evidence is going to come in the form of documents and witness
09:07:56 7 testimony, both live and recorded. And at the end of the trial
09:08:00 8 we will have a chance to speak to you directly again, and we
09:08:04 9 will show you how the evidence tracked our road map.

09:08:06 10 Now, after you hear from all the witnesses over the
09:08:08 11 course of the next several days, Voxer is confident that you
09:08:08 12 will find that Facebook and Instagram, through their Facebook
09:08:10 13 and Instagram Live video messaging services, infringed the two
09:08:17 14 patents that Voxer has asserted. And we believe that you will
09:08:20 15 also find that Voxer is entitled to damages for that
09:08:23 16 infringement.

09:08:28 17 Now, ladies and gentlemen, let's get to the road map.
09:08:33 18 This is a case about an idea that was born on the battlefield
09:08:37 19 of Afghanistan following 9/11, and that led to the founding of
09:08:40 20 a company, Voxer, by our client, Tom Katis, and the patents
09:08:44 21 that are asserted here.

09:08:45 22 Now, let me tell you a little bit about Tom Katis.
09:08:49 23 Like I mentioned, Mr. Katis founded Voxer in 2007. But before
09:08:53 24 that Mr. Katis was already a successful entrepreneur and a
09:08:58 25 decorated Green Beret. Now, you will hear that, after high

09:09:02 1 school, Mr. Katis enlisted in the Army, and it turns out that
09:09:05 2 every Green Beret needs to have an area of expertise. And
09:09:11 3 based on aptitude testing, Mr. Katis was trained to be a
09:09:14 4 communications sergeant.

09:09:16 5 Now, a communications sergeant is someone who is
09:09:19 6 responsible for everything that contains electronics on the
09:09:23 7 battlefield. And you'll hear from Mr. Katis that the things he
09:09:28 8 was responsible for included things like satellite
09:09:32 9 communications and battlefield radios, the walkie-talkies that
09:09:35 10 you might be familiar with.

09:09:38 11 Now, after his enlistment was up, Mr. Katis went to
09:09:40 12 college, first a year at the University of North Carolina at
09:09:43 13 Charlotte, and then he transferred to Yale University. Now,
09:09:47 14 after graduating from Yale in 1994, Mr. Katis got a job in
09:09:50 15 New York for Citicorp. And you'll hear how Mr. Katis was one
09:09:53 16 of four people who founded the bank's Internet group.

09:09:57 17 Now, after serving as Citicorp's vice-president in
09:09:59 18 charge of Internet payments for several years, Mr. Katis then
09:10:00 19 joined an Internet startup, where he was vice-president of
09:10:02 20 business development, until shortly before the 9/11 terrorist
09:10:07 21 attacks.

09:10:09 22 Now, when 9/11 happened, you'll hear how Mr. Katis,
09:10:13 23 like others who had served before, believed that his country
09:10:17 24 needed well-trained soldiers to re-enlist. And, like many brave
09:10:23 25 Americans, Mr. Katis did that, and he was deployed to

09:10:27 1 Afghanistan, where he was in Kunar Province. There he and his
09:10:31 2 men were tasked with training Afghan special forces units,
09:10:35 3 looking for Al Qaeda.

09:10:37 4 Now, you'll hear from Mr. Katis that the genesis for
09:10:40 5 his thinking that led to Voxer, the plaintiff in this case,
09:10:43 6 came during his time in Afghanistan, in particular, after this
09:10:46 7 photo here which came following a particularly grueling ambush
09:10:49 8 on January 15, 2003.

09:10:51 9 Now, on that day Mr. Katis was responsible for
09:10:56 10 coordinating his unit's communications, as he always was. And
09:11:00 11 even though the military had access to some of the best
09:11:05 12 communication devices in the world, the \$15,000 radios that
09:11:10 13 they were using in 2002 were essentially the same radios that
09:11:16 14 Mr. Katis had used when he first enlisted more than a decade
09:11:20 15 earlier. And those radios you'll hear have limited
09:11:23 16 functionality.

09:11:24 17 Thinking about the ambush later where he had been
09:11:26 18 trying to coordinate so many different things: his team,
09:11:30 19 medevac, air support, quick-reaction forces, his commander,
09:11:37 20 Mr. Katis realized that his radio, which had separate channels
09:11:40 21 for communications that were all being broadcast
09:11:42 22 simultaneously, didn't allow him to choose which ones to be
09:11:46 23 live and which ones to deal with later.

09:11:48 24 If he changed the channel, the live broadcast would
09:11:51 25 be lost. And his sense of frustration about this later had him

09:11:57 1 thinking that a two-way communications system that was both
09:12:00 2 live and recorded, something that Mr. Katis referred to as
09:12:04 3 "time-shifted," kind of like a DVR, where you might record
09:12:08 4 something and go back and watch it later, but applied to
09:12:11 5 two-way communications, would be a great improvement. And what
09:12:16 6 he later found was that no such system existed. But I'll talk
09:12:19 7 a little bit about that more in a minute.

09:12:24 8 Now, after Mr. Katis left the military and before he
09:12:27 9 started Voxer, he founded a company called Triple Canopy, and
09:12:31 10 that was a government contractor that provided high-threat
09:12:34 11 security overseas. And you'll hear that Mr. Katis and his
09:12:38 12 cofounder saw a need, in light of problems by companies such as
09:12:41 13 Blackwater, for a more ethical security company. And you'll
09:12:46 14 hear that after a number of years, that company that he and his
09:12:49 15 cofounder started was very successful. And when it was sold,
09:12:53 16 it had more than 11,000 employees and annual revenues of
09:12:56 17 greater than \$1 billion.

09:12:59 18 Now, working with Triple Canopy introduced Katis to
09:13:03 19 someone else who is going to be very important to what you're
09:13:06 20 going to be hearing over the next few days, his cofounder of
09:13:10 21 Voxer, Matt Ranney. Now Mr. Ranney's specialty was networking,
09:13:14 22 and he was hired by Triple Canopy to help set up satellite
09:13:18 23 computer networks across Iraq. Now, while working at Triple
09:13:22 24 Canopy, Mr. Katis and Mr. Ranney talked about the frustration
09:13:24 25 Mr. Katis had experienced with military radios, and the two of

09:13:29 1 them began a dialogue that would ultimately lead them to Voxer.

09:13:32 2 Now, you'll hear from them that what they were

09:13:36 3 looking for was a new hybrid communications system that could

09:13:40 4 be both live and time-shifted at the same time. And what

09:13:45 5 you'll hear from Mr. Katis is that, prior to Voxer, if you

09:13:48 6 wanted to communicate with someone, you basically had two

09:13:51 7 options: You could have a live communication, something like a

09:13:55 8 telephone, or you could have a time-delayed communication,

09:13:59 9 something like a text or e-mail.

09:14:01 10 And as we all know, for a phone call, you have to

09:14:04 11 ring and interrupt someone, you have to set up the connection

09:14:08 12 first, and then when the other side answers, you can talk. But

09:14:12 13 if something is missed or the call is dropped, the

09:14:14 14 communication is lost.

09:14:16 15 For e-mail, by contrast, you have to compose it

09:14:20 16 before you send it, and then when you hit send, it gets

09:14:24 17 delivered, but the communication isn't live. You have to wait

09:14:27 18 for it to be sent. It is recorded, though.

09:14:31 19 Now what Voxer built was a hybrid of these two

09:14:34 20 systems, a technology where you could be live without

09:14:38 21 interrupting anyone, and the live communication could also be

09:14:41 22 recorded so that it could be listened to or viewed later.

09:14:49 23 Voxer would refer to this technology as "live messaging."

09:14:53 24 Now, you'll hear from Mr. Katis that he had his

09:14:57 25 epiphany about how Voxer might offer this technology in the

09:14:59 1 fall of 2006. And you can see in the timeline there's a
09:15:04 2 reference here to a white paper that Mr. Katis wrote at that
09:15:07 3 time. And he went on to form Voxer in March of 2007.

09:15:13 4 And, from the beginning, Mr. Katis and Mr. Ranney
09:15:16 5 believed that they had developed a revolutionary technology,
09:15:20 6 and they wanted to patent it. And they did. They went to the
09:15:23 7 patent office, and both Mr. Katis and Mr. Ranney have received
09:15:27 8 more than 150 patents relating to live messaging technology.

09:15:32 9 Now, these are two of the patents, the two patents
09:15:35 10 that are being asserted in this case, the '270 and the '557
09:15:40 11 patent. And we'll talk about these in detail throughout the
09:15:43 12 trial.

09:15:44 13 Now, before I start talking about patents in detail,
09:15:48 14 I just wanted to briefly focus again on what is a patent. And
09:15:51 15 I know you saw in the video yesterday that the court played,
09:15:54 16 and that gives a good description, of course, about the laws.
09:15:58 17 Now, our Founding Fathers believed that patent rights were so
09:16:02 18 important that they wrote those rights into the first article
09:16:04 19 of the Constitution. They wrote that Congress shall have the
09:16:07 20 power to promote the progress of science by securing for
09:16:10 21 limited times to inventors the exclusive rights to their
09:16:14 22 discoveries.

09:16:17 23 Now, the patents at issue here, they only last for
09:16:20 24 20 years, and after that the inventions are dedicated to the
09:16:24 25 world. So that's the bargain that inventors make. If you

09:16:28 1 disclose your inventions to the world by publishing them in a
09:16:32 2 patent, you get the right to prevent others from using those
09:16:36 3 inventions for 20 years without your permission. And if
09:16:39 4 someone does use your patent without permission, then you can
09:16:42 5 come into court like Voxer has done here and seek damages for
09:16:46 6 that use, something that we call "infringement."

09:16:48 7 So patents are like property rights protected by the
09:16:52 8 Constitution. They're like a deed you would have to your land
09:16:55 9 or to your home. And just like people aren't allowed to
09:16:58 10 trespass on your property without permission, nobody can use
09:17:02 11 someone else's patent, no matter how big the company is, no
09:17:06 12 matter how powerful, without permission.

09:17:09 13 So let's look a little more closely at the two
09:17:12 14 patents that are at issue here. Mr. Katis and Mr. Ranney and
09:17:15 15 the other coinventors at Voxer did what they were supposed to
09:17:18 16 do. They went to the patent office, they told the people there
09:17:22 17 about their inventions, and the patent office then published
09:17:26 18 those disclosures to the world.

09:17:28 19 And they did this first in what you're going to hear
09:17:30 20 from Mr. Katis as a June of 2007 provisional patent
09:17:34 21 application. And you'll hear from Mr. Katis and Mr. Ranney
09:17:36 22 about what they were thinking back then. And, in particular,
09:17:39 23 you'll hear about their vision which they describe here: To do
09:17:42 24 for voice and video communications what e-mail, instant
09:17:46 25 messaging, and devices like the Blackberry have done for

09:17:48 1 written correspondence. Users can send quick voice or video
09:17:53 2 messages at the click of a button to any number of users
09:17:58 3 without necessarily interrupting other conversations or waiting
09:18:02 4 for acknowledgment.

09:18:05 5 And they also wanted to have a way of organizing and
09:18:09 6 allowing people to handle those various conversations, a system
09:18:12 7 for managing them. And you can see that's in the title of this
09:18:16 8 document. And in point number one, they said we also want to
09:18:20 9 develop a user interface to organize and prioritize current and
09:18:24 10 past conversations, manage contacts and groups, and manage that
09:18:30 11 user's interaction with the system.

09:18:32 12 Now, Voxer also filed for a second provisional patent
09:18:35 13 application. You can see on the timeline that that happened in
09:18:38 14 October of 2007, and that contained even more details,
09:18:42 15 including the identification of certain target markets, such as
09:18:47 16 public and social networks or media industries, including
09:18:53 17 broadcasting.

09:18:53 18 Now, ultimately, the patent office evaluated Voxer's
09:18:58 19 various applications, compared them to what had come before,
09:19:01 20 and concluded that Mr. Katis and Mr. Ranney were entitled to
09:19:04 21 patents, including the two that we have here.

09:19:09 22 So focusing on those two patents, the first is what
09:19:14 23 we call the '270 patent. And we use the last three numbers of
09:19:18 24 the patent. Even though you can see the longer number is
09:19:22 25 10,142,270, we'll just be referring to it during the trial as

09:19:27 1 the '270 patent. And you can see Mr. Katis and Mr. Ranney are
09:19:31 2 named inventors on that patent, along with two of their
09:19:34 3 coinventors from Voxer.

09:19:36 4 Now, that patent is assigned to a company called
09:19:39 5 Voxer IP. It's one of the other plaintiffs in this case, but
09:19:43 6 for your purposes they're the same company during this trial.

09:19:46 7 And you'll also hear that this patent is entitled to
09:19:49 8 a priority date going back to at least February of 2008, when
09:19:55 9 the original patent application that they filed that was the
09:19:58 10 parent of these patents being asserted was filed.

09:20:01 11 Now, you'll hear that Voxer is asserting four claims
09:20:06 12 from the '270 patent, the '270 patent. It's Claims 34, 47, 48,
09:20:12 13 and 51, and there will be further testimony and discussion of
09:20:16 14 those patents during the trial.

09:20:18 15 Now, the second patent being asserted by Voxer is
09:20:21 16 Voxer's '557 patent. Again, you can see that Mr. Katis and
09:20:25 17 Mr. Ranney are listed as coinventors. That patent is also
09:20:29 18 assigned to Voxer IP, and that patent also claims priority back
09:20:35 19 to at least February 8, 2008. And Voxer is asserting two
09:20:40 20 claims from that patent, Claim 1 and Claim 9.

09:20:44 21 Now, it's important to put us back in time a little
09:20:47 22 bit so that we all have some perspective about the world that
09:20:51 23 existed when Mr. Katis and Mr. Ranney were considering their
09:20:53 24 inventions back in 2007. And, as you can see on the timeline,
09:21:00 25 the very first provisional that Voxer filed on June 28, 2007

09:21:05 1 was the day before the first iPhone came out.

09:21:08 2 And while we're all now used to a smart phone world

09:21:13 3 where we can use our Apple iPhones or Android devices, things

09:21:18 4 were very different in the pre-smart phone world where

09:21:20 5 Mr. Katis and Mr. Ranney were considering their inventions.

09:21:24 6 And you'll hear, for example, how bandwidth and networking

09:21:27 7 conditions were much lower then, where it was a 2G world, not a

09:21:33 8 5G world, although we don't always get 5G. But you'll hear how

09:21:38 9 the networks were very different then.

09:21:41 10 Now, like I mentioned from its founding, Voxer was

09:21:44 11 eager to seek patent protection for its inventions. And you'll

09:21:48 12 hear that it did that because Mr. Katis and Mr. Ranney wanted

09:21:51 13 to protect themselves against the dominant players in the

09:21:54 14 marketplace. At the time that was mobile carriers like AT&T

09:21:58 15 and Verizon, but it was also the handset companies like

09:22:02 16 Motorola, and then certainly Internet companies that moved into

09:22:07 17 telecommunication space, companies like Google and Facebook.

09:22:10 18 But, in addition to seeking patent protection, Voxer

09:22:13 19 also set out to build a world-class app, a company -- a product

09:22:16 20 that could deliver live messaging to smart phones. And after

09:22:21 21 years of effort, building and rebuilding their server

09:22:25 22 infrastructure so they could deliver fast, seamless delivery of

09:22:29 23 live messaging to their users with what you'll hear from

09:22:34 24 Mr. Ranney was a scalable network architecture that could

09:22:37 25 accommodate millions and millions of users, Voxer rolled out

09:22:42 1 their apps for iOS and Android in 2011. And you can see on the
09:22:48 2 timeline that their app for iOS, for iPhone, that was in May,
09:22:52 3 and their app for Android, that was in November of 2011.

09:22:57 4 Now, the Voxer logo was a picture of a smiling
09:23:03 5 walkie-talkie. I think they called it "Walkie." It was a nod
09:23:06 6 to some of Mr. Katis' original thinking that led to Voxer. But
09:23:09 7 the app itself was much more than that.

09:23:11 8 Now, as many of you probably remember from being a
09:23:14 9 kid, a walkie-talkie worked where only one person could speak
09:23:19 10 at a time, it wouldn't be recorded, you needed someone else
09:23:23 11 connected to it for you to be able to transmit to them. With
09:23:27 12 the Voxer app, by contrast, once someone started recording
09:23:31 13 their voice, that was uploaded to the Voxer servers even
09:23:34 14 before a recipient was connected and the message could be heard
09:23:38 15 live or on a recorded basis.

09:23:42 16 Now, you will hear that this first app did not have
09:23:44 17 video, and that was because, like we were talking about,
09:23:49 18 phones, the handsets didn't work that well back then, and
09:23:52 19 bandwidth constraints didn't make it viable for them to have
09:23:55 20 video at that time. But you will hear from Mr. Ranney that the
09:23:59 21 code for using video was already written for the server at that
09:24:03 22 point. Voxer just needed the world to catch up in terms of the
09:24:08 23 headset -- the handset devices and the networks.

09:24:12 24 Now, shortly after the Voxer app's release in late
09:24:15 25 2011, the app went viral. You'll hear that Voxer was often the

09:24:18 1 number one app in the App Store, even ahead of Facebook, in
09:24:22 2 social networking apps. And this was in the late 2011 time
09:24:26 3 frame.

09:24:26 4 And then in 2012, for the calendar year, it was
09:24:29 5 number 13 out of all apps in the App Store. It was ahead of
09:24:36 6 Facebook Messenger, which you can see was number 23. And by
09:24:43 7 the end of 2012, you'll hear from Mr. Katis that Voxer had
09:24:47 8 nearly 60 million total users.

09:24:49 9 Now, the viral success of Voxer's app caught the
09:24:52 10 attention of lots of people in technology. Many companies
09:24:55 11 reached out to Voxer, including Facebook. And you'll hear
09:24:59 12 that, beginning at the end of 2011, Facebook reached out to
09:25:03 13 Voxer on a number of occasions to see if they could do business
09:25:10 14 together. And, again, for some perspective, at the end of
09:25:15 15 2011, Facebook wasn't a publicly traded company. So it was in
09:25:18 16 a different position than, obviously, you think of Facebook
09:25:20 17 today. Beyond, that its Facebook Messenger product didn't even
09:25:24 18 offer voice at the time that Voxer was offering voice for
09:25:27 19 theirs.

09:25:27 20 And you can see on the timeline that there was a
09:25:29 21 series of meetings beginning at the end of 2011 and going into
09:25:35 22 February and March of 2012, where Voxer met with some of the
09:25:38 23 most senior executives at Facebook, all the way up to senior
09:25:44 24 executives such as Mike Schroepfer, who was the director of
09:25:48 25 engineering, and Mark Zuckerberg himself, Facebook's CEO.

09:25:50 1 And you'll hear that Mr. Katis and Mr. Ranney, in the
09:25:53 2 series of meetings they had with these senior executives and
09:25:57 3 with Facebook engineers, described their live messaging
09:26:02 4 technology. And you'll hear that Mr. Katis, because he was
09:26:05 5 concerned about his position in the marketplace, repeatedly
09:26:09 6 described that they had sought patent protection for the
09:26:13 7 various inventions that their company had.

09:26:16 8 Now, internal documents from Facebook showed that
09:26:19 9 Facebook viewed Voxer's technology very positively. After
09:26:23 10 their first substantial meeting in February of 2012 with
09:26:27 11 Peter Deng, who was the director of product for Facebook
09:26:31 12 Messenger -- and you'll hear some of his testimony in this
09:26:34 13 trial -- Deng described Voxer as having "good product sense."
09:26:37 14 He described that the founders were "long-term thinkers," where
09:26:42 15 "their vision was to take over the space between phone-to-phone
09:26:45 16 and text." And he said that they "built good technology."

09:26:48 17 And you can see there that he wrote, "Not only did
09:26:51 18 their system scale well with their hyper growth late last year,
09:26:55 19 but they focused on build the products -- build the products to
09:27:01 20 have really good flows."

09:27:04 21 And you can see this is an e-mail from February 8,
09:27:08 22 2012, shortly after their February 6th meeting, which Mr. Deng
09:27:13 23 sent to mark@facebook.com, who is Mr. Zuckerberg,
09:27:17 24 Mike Schroepfer, and some other senior Facebook executives.

09:27:22 25 Now, you'll also hear what Zuckerberg himself wrote.

09:27:25 1 And he said: "I'm not surprised that the founders are smart.
09:27:29 2 The product seems generally well done. It might be worth
09:27:32 3 getting them on board if the price is reasonable."

09:27:36 4 Now, at the time, Voxer was seeking funding for its
09:27:42 5 company, and you'll hear from Mr. Katis that they did actually
09:27:47 6 obtain that funding in April of 2012. And that funding valued
09:27:51 7 Voxer at about \$200 million, and internal Facebook documents
09:27:56 8 confirm that they knew that was the valuation that people were
09:28:01 9 talking about with respect to Voxer.

09:28:04 10 This is an e-mail sent from a Facebook senior
09:28:07 11 executive, Amin Zoufonoun, to Chris Daniels, talking about the
09:28:09 12 fact that they're considering Voxer for an acquisition and that
09:28:15 13 Voxer was raising funding that valued them at \$200 million.

09:28:19 14 Now, as part of the series of meetings that Mr. Katis
09:28:23 15 and Mr. Ranney had, they had a meeting with Peter Deng again --
09:28:29 16 they had several meetings with him. He was coordinating the
09:28:33 17 efforts on behalf of Facebook with respect to investigating
09:28:38 18 Voxer -- and then this meeting with Chris Daniels to discuss
09:28:44 19 the potential licensing of Voxer's technology.

09:28:47 20 And you'll hear from Mr. Ranney that at that meeting
09:28:51 21 he had a white board, and he was describing how Voxer's
09:28:55 22 technology worked. And Mr. Ranney will testify that, during
09:28:58 23 that meeting, a number of product engineers and other engineers
09:29:03 24 and executives for Facebook came in and were asking questions
09:29:06 25 about "Could you use this live messaging technology for video?"

09:29:10 1 And both he and Mr. Katis explained that you could and how you
09:29:13 2 would do that.

09:29:14 3 Now, you're also going to hear from Mr. Katis that,
09:29:18 4 at the end of the meeting, he went up to Chris Daniels and
09:29:22 5 asked him what he thought about it. And Chris Daniels said to
09:29:27 6 him that he thought that the meeting was great. There was just
09:29:30 7 one thing. Facebook was considering whether or not Voxer's
09:29:33 8 technology was core and whether or not Voxer was a competitor.

09:29:36 9 And you're going to hear from Mr. Katis that he was
09:29:39 10 troubled by this statement. Mr. Katis was concerned that, if
09:29:43 11 Facebook determined that Voxer's technology was core and that
09:29:46 12 Voxer was a competitor, then they were going to build that
09:29:52 13 technology themselves. They weren't going to license it from
09:29:58 14 some other company that had control over it.

09:30:01 15 Now, after that meeting, abruptly, despite months of
09:30:04 16 productive discussions, Facebook told Voxer at the end of March
09:30:09 17 that they weren't interested. And you'll hear from Mr. Katis
09:30:12 18 that he was surprised by this; that it didn't make sense, given
09:30:16 19 the trajectory of their discussions that they'd had.

09:30:22 20 Now, what Voxer didn't know is that Facebook internal
09:30:25 21 documents will show that Facebook had been having discussions
09:30:29 22 about building a decent version of Voxer themselves in-house.

09:30:32 23 Now, fast-forward a bit to August of 2015. Facebook
09:30:35 24 began to roll out Facebook and Instagram Live, their real-time
09:30:39 25 streaming video services. And upon seeing this, Mr. Katis was

09:30:43 1 reminded of that discussion he had had with Chris Daniels after
09:30:47 2 their March 2012 meeting, where after discussing the video use
09:30:59 3 cases for live messaging, as well as Voxer's various patents,
09:31:04 4 Mr. Daniels said that Facebook was trying to decide if Voxer's
09:31:09 5 technology was core and if Voxer was a competitor. And you'll
09:31:14 6 hear from Mr. Katis that, after seeing Facebook Live and
09:31:18 7 Instagram Live roll out, that Mr. Katis determined that
09:31:22 8 Facebook's answer to both those questions was yes.

09:31:25 9 Now, Mr. Katis reached out to Facebook in early 2016
09:31:29 10 after this, and he said, look, in a series -- in a meeting that
09:31:34 11 he had and in some e-mails, he said: We think Facebook Live
09:31:40 12 looks like our patented technology, and Voxer sent materials to
09:31:44 13 Facebook describing their patents and invited Facebook to
09:31:49 14 engage in some licensing discussions. But Facebook wasn't
09:31:54 15 interested.

09:31:54 16 And then, as Facebook enjoyed the success of Live, as
09:31:57 17 live videos grew from hundreds to thousands to tens of
09:32:02 18 thousands, to hundreds of thousands, to millions, to tens of
09:32:07 19 millions, to almost a billion live videos a month, Voxer was
09:32:12 20 compelled to bring this lawsuit to protect its patent rights.

09:32:15 21 Voxer had done the right thing. Mr. Katis and
09:32:18 22 Mr. Ranney patented their technology, and they disclosed it
09:32:22 23 publicly. And the evidence will show that Facebook did the
09:32:26 24 wrong thing. They decided to use someone else's technology
09:32:29 25 rather than innovate. Consequently, Voxer expects Facebook and

09:32:34 1 Instagram to honor Voxer's patent rights, and now they're
09:32:38 2 asking you to enforce those patents and make Facebook and
09:32:41 3 Instagram to do the right thing, too: compensate Voxer for
09:32:47 4 their use.

09:32:47 5 And that leads me to two other witnesses that you're
09:32:52 6 going to hear from in this trial. The first is
09:32:57 7 Dr. Michael Mitzenmacher. Dr. Mitzenmacher is Voxer's
09:33:00 8 technical expert. He's an expert in computer networking and
09:33:04 9 multimedia processing. He has degrees from Harvard and
09:33:08 10 Berkeley, and he's currently a tenured professor at Harvard in
09:33:10 11 the computer science department.

09:33:11 12 And he went through and carefully studied all of
09:33:18 13 Facebook and Instagram's technical documents, and he looked at
09:33:21 14 the source code, the computer code that runs Facebook and
09:33:24 15 Instagram Live, and he reviewed the various testimony of the
09:33:28 16 Facebook and Instagram witnesses who have offered testimony
09:33:31 17 about how their products operate.

09:33:33 18 And then with that information he carefully compared
09:33:37 19 Facebook and Instagram Live and their operations with each of
09:33:40 20 the elements of the claims that are being asserted in the '270
09:33:44 21 and '557 patents. And he's going to show you the infringement
09:33:49 22 element by element. He's going to walk you through and show
09:33:52 23 how, in the accused Facebook and Instagram products, each
09:33:56 24 element of the asserted Voxer claims are found there.

09:33:59 25 And that's Voxer's burden as plaintiff. We can't

09:34:02 1 just come in here and say we think Facebook and Instagram are
09:34:05 2 infringing. We have the burden of proof, and we need to show
09:34:08 3 you that, by a preponderance of evidence, the accused products
09:34:11 4 meet every element.

09:34:13 5 And the judge will instruct you that a preponderance
09:34:15 6 of the evidence simply means "more likely than not." And
09:34:18 7 Dr. Mitzenmacher will walk you through this, and he'll testify
09:34:21 8 that, in his expert opinion, the accused Facebook and Instagram
09:34:24 9 live products meet each and every element of the six asserted
09:34:28 10 patent claims.

09:34:30 11 Now, you will also hear from Alan Ratliff.
09:34:31 12 Mr. Ratliff is Voxer's damages expert. He's a certified public
09:34:37 13 accountant and a licensed attorney. He's an expert in patent
09:34:42 14 damages and licensing.

09:34:45 15 Now, if you find infringement, as we believe you
09:34:48 16 will, then the judge will instruct you that you have to award
09:34:52 17 damages. Now, the law provides that, upon finding the
09:34:57 18 claimant -- upon finding for the claimant, the court shall
09:35:01 19 award the claimant damages adequate to compensate for the
09:35:03 20 infringement but, in no event, less than a reasonable royalty.
09:35:08 21 So what Voxer is asking for is a reasonable royalty based on
09:35:10 22 the use of Voxer's invention by Facebook and Instagram in their
09:35:16 23 products Facebook and Instagram Live.

09:35:18 24 Now you'll hear from Dr. Mitzenmacher and Mr. Ratliff
09:35:20 25 that, as part of their analysis, the infringing features in

09:35:25 1 this case give great benefit to Facebook and Instagram. And,
09:35:28 2 based on these analyses, Mr. Ratliff determined that a
09:35:32 3 reasonable royalty to date would be \$174 million. Now, you
09:35:38 4 will also hear from Mr. Ratliff that Facebook made much, much,
09:35:42 5 much more than that from Voxer's inventions.

09:35:46 6 Now, one last thing on damages: The number that
09:35:50 7 we're asking for is only up to the date of this trial. Now,
09:35:53 8 why is that? That's because the patents that are in suit here
09:35:59 9 don't expire until February of 2028. So we're going to ask
09:36:05 10 that you find the damages should be in the form of a running
09:36:09 11 royalty through the date of the trial.

09:36:11 12 And if Facebook and Instagram go on to continue using
09:36:14 13 these infringing features, they can continue to pay a royalty.
09:36:19 14 If they decide, however, going forward that they want to stop,
09:36:23 15 they can stop infringing, and they wouldn't be obligated to
09:36:25 16 pay. And we will ask you on the verdict form which you'll see
09:36:30 17 in your binders to find damages in the form of a reasonable
09:36:33 18 royalty.

09:36:34 19 Now, what will Facebook and Instagram say? They will
09:36:36 20 likely say they don't infringe for some number of reasons, or
09:36:39 21 that the patents, despite the presumption of validity and
09:36:42 22 despite the fact that Facebook has to prove invalidity by a
09:36:46 23 heightened clear and convincing evidence standard, they may
09:36:49 24 argue that the patent's aren't valid. Or, that even if the
09:36:53 25 patents are valid and they are infringed, that they shouldn't

09:36:57 1 be obligated to pay very much, if anything.

09:37:00 2 But, regardless of what they say, I just ask you to
09:37:04 3 listen carefully and evaluate if what they are saying makes
09:37:08 4 sense, if it makes sense to you, in light of all of the
09:37:12 5 evidence. You're here because of your common sense and our
09:37:14 6 system trusts that your common wisdom is the best way to weigh
09:37:18 7 the evidence and decide who is right.

09:37:20 8 So, I'd like to say thank you again for your time on
09:37:23 9 behalf of all of our team. We very much look forward to
09:37:26 10 addressing you about Voxer's claim over the rest of the trial.

09:37:30 11 Thank you very much.

09:37:31 12 THE COURT: Thank you. Defendant may open.

09:37:33 13 MR. VAN NEST: Can I just have a moment to set up,
09:37:35 14 Your Honor?

09:37:36 15 THE COURT: You may.

09:37:37 16 MR. VAN NEST: Your Honor, may I proceed?

09:37:38 17 THE COURT: You may.

09:37:39 18 **DEFENDANT'S OPENING STATEMENT**

09:37:39 19 MR. VAN NEST: Thank you, very much. May it please
09:37:41 20 the Court:

09:37:42 21 Good morning, ladies and gentlemen, and welcome back.

09:37:44 22 My name is Bob Van Nest, and it's a real privilege for me,
09:37:46 23 along with my team, to be here during our trial representing
09:37:53 24 Facebook, one of the most innovative American technology
09:37:56 25 companies in the world today. I also want to begin by thanking

09:38:35 1 you for your service as jurors. This is a very important
09:38:38 2 dispute for both parties, and we really appreciate your being
09:38:42 3 here.

09:38:42 4 We know that jury service is a burden, it's not
09:38:47 5 voluntary, and you're taking time out of your busy lives. So
09:38:51 6 we really do appreciate the time you'll be spending with us
09:38:55 7 this week and early next.

09:38:57 8 The Facebook and Instagram products at issue in this
09:39:00 9 lawsuit, Facebook Live and Instagram Live, are not using
09:39:02 10 Voxer's patents. The engineers that built these products will
09:39:07 11 be here to testify that they used their own ideas, their own
09:39:10 12 engineering, and, in some cases, long-standing standardized
09:39:15 13 technology for video streaming that have been around for a long
09:39:20 14 time.

09:39:20 15 None of this work was based on the Voxer patents, and
09:39:27 16 there won't be any evidence that any engineer on the Facebook
09:39:30 17 or Instagram Live development teams ever saw, used, or was even
09:39:33 18 aware of the Voxer patents. As a matter of fact, when Facebook
09:39:39 19 Live and Instagram Live were developed, these patents did not
09:39:42 20 even exist. They hadn't even been applied for. They were
09:39:46 21 applied for years after these products launched. And so
09:39:55 22 Facebook Live is very different from the Voxer patents.
09:39:58 23 Nothing was copied, and there is no patent infringement.

09:40:02 24 Now, another reason for the differences between
09:40:06 25 Facebook and Instagram Live and Voxer is that the companies

09:40:09 1 were trying to solve very different problems. Voxer was trying
09:40:13 2 to improve communications where you needed to make a direct
09:40:17 3 communication to an intended recipient where guaranteed
09:40:22 4 delivery was very important.

09:40:23 5 So they built a voice walkie-talkie app where you
09:40:29 6 could send a message directly to an intended recipient and try
09:40:33 7 to ensure reliable delivery. But it was only a voice app. And
09:40:40 8 Voxer was never able to use its technology to build a live
09:40:44 9 streaming video product. Never.

09:40:46 10 Now, Facebook on the other hand was trying to develop
09:40:53 11 something different. They were aiming for a broadcast system,
09:40:56 12 where a live video could be made available to thousands or even
09:40:59 13 millions of people upon their request. The original idea for
09:41:04 14 Facebook Live was intended for celebrities. Facebook had a
09:41:10 15 feature, and the idea was let's give celebrities another way to
09:41:15 16 connect with their fan base by making live videos available to
09:41:22 17 fans who requested to see them. There was no guarantee of
09:41:27 18 delivery to anyone.

09:41:29 19 Now, the Facebook engineering team took about a year,
09:41:34 20 and you'll will hear about that from the engineers that
09:41:37 21 participated in it. And at the height of it, it involved more
09:41:42 22 than 100 Facebook engineers trying to get this product ready
09:41:45 23 for launch.

09:41:45 24 Now, when these companies met back in 2012, the focus
09:41:50 25 of the discussion was on voice communications. At that time

09:41:53 1 live video streaming was not new; it had been around for a long
09:41:57 2 time. There were other examples which we'll see in a minute.
09:42:02 3 And Voxer didn't have a live video streaming product. They had
09:42:12 4 a voice app. Facebook was considering adding voice to
09:42:16 5 Messenger, and so the discussions focused on that: voice
09:42:22 6 communications, not video. But, as you saw a little bit
09:42:26 7 earlier, the technology just wasn't right for Facebook, and
09:42:29 8 they said no thanks.

09:42:31 9 Now, after Facebook launched Facebook Live in 2015,
09:42:36 10 Mr. Katis and Voxer came back to Facebook to offer to license
09:42:40 11 or sell their technology. They didn't complain about patent
09:42:45 12 infringement. They didn't say anything had been copied. They
09:42:50 13 didn't contend anything was wrong. They were there just
09:42:53 14 offering to sell or license their technology to Facebook, and
09:43:00 15 we'll see that in detail in just a minute. But, again,
09:43:08 16 Facebook said this technology is not right for us, and the
09:43:12 17 parties went their separate ways.

09:43:15 18 It wasn't until a couple of years later that Voxer
09:43:18 19 even applied for these live streaming video patents. That was
09:43:23 20 in 2017 and 2018, a couple of years after Facebook Live
09:43:27 21 launched. But by that time, by the time they applied to the
09:43:31 22 patent office for these patents, Facebook Live had already been
09:43:36 23 designed, built, launched, and was fully public.

09:43:41 24 Now, Voxer technology wasn't right for Facebook, but
09:43:44 25 it wasn't right for the industry either. After Facebook told

09:43:49 1 Voxer for the second time we're not interested, Voxer marketed
09:43:52 2 this technology and their patents to nearly 100 technology
09:43:56 3 companies, nearly 100. Not one other company has licensed or
09:44:01 4 purchased Voxer's technology for any purpose. They went to the
09:44:06 5 market, they offered their patents, and not a single company
09:44:11 6 was interested. And even Voxer has not used any of the
09:44:16 7 inventions in the '270 or the '557 patents in their products.
09:44:25 8 So not even Voxer is using this technology.

09:44:28 9 So let me turn to our key points of evidence. This
09:44:32 10 is what I'm going to outline this morning for you. The first
09:44:39 11 key point is that Facebook engineers built Facebook Live using
09:44:43 12 their own technology, not Voxer's technology. They did their
09:44:47 13 own work, and you're going to hear from them shortly.

09:44:51 14 Technology in Facebook Live's products is
09:44:55 15 fundamentally different from anything in the Voxer patents.
09:45:00 16 That means there is no patent infringement.

09:45:04 17 And Voxer's technology just wasn't right for Facebook
09:45:07 18 or anyone else in the industry.

09:45:09 19 Now, this is a timeline that we can use to kind of
09:45:12 20 keep the key events in focus. And before I get into it, I want
09:45:18 21 to point out just a couple of things that we're going to be
09:45:20 22 reviewing. First of all, neither Facebook nor Voxer invented
09:45:26 23 live streaming video or adaptive bitrate technology, which is
09:45:32 24 the subject of the '557 patent. Neither company did that.
09:45:36 25 These technologies have been around since the '90s.

09:45:39 1 Facebook launched in 2004. It was available then to
09:45:42 2 college students. And since that time, long before Facebook
09:45:46 3 Live, Facebook has introduced new features along the way.

09:45:53 4 Now, when the parties first met in February, March of
09:45:57 5 2012 and had the discussions you heard about, these patents,
09:46:03 6 the '270 and the '557, they didn't exist. They weren't applied
09:46:09 7 for, as you see on the timeline, until a couple of years later.
09:46:15 8 So Facebook Live was built and launched before these patents
09:46:20 9 were in existence.

09:46:22 10 So let's start with the timeline. We're going to go
09:46:23 11 over to the left and pull it out and look at live streaming
09:46:30 12 video. As you can see here, live streaming video has been
09:46:34 13 around since the '90s. In June of 1993, a band -- and I put
09:46:39 14 that in quotes -- called Severe Tire Damage was the first to
09:46:42 15 live stream a concert. Now, I asked the folks -- I've never
09:46:47 16 heard of these guys. They are a bunch of computer scientists.
09:46:50 17 They're not a real band. But they livestreamed a concert in
09:46:53 18 the early '90s. And as you can see from the timeline, there
09:46:58 19 were a lot of developments along the way.

09:47:01 20 In '97, RealNetworks launched a RealVideo product.
09:47:06 21 By '98 this was being used so commonly that industry adopted a
09:47:10 22 protocol. That's an industry standard protocol, real-time
09:47:12 23 streaming protocol, the RTSP.

09:47:15 24 In the 2000s this took off. Madonna livestreamed a
09:47:18 25 concert to 9 million people. University of Washington started

09:47:22 1 interactive learning. That's like what we had to do during
09:47:25 2 COVID, the interactive learning video like COVID. But that
09:47:30 3 with UW back in '01. And by 2003 all the major instant
09:47:35 4 messaging systems were supporting live video. And you can see
09:47:40 5 there on the timeline Skype was introduced and then Microsoft
09:47:44 6 had a product. All this happened before Voxer even existed and
09:47:49 7 long before Voxer even built its first app.

09:47:51 8 And the same is true of adapted bitrate technology.
09:47:55 9 What is that? This is technology that's relevant to the '557.
09:47:59 10 This involves your phone or your tablet or your laptop
09:48:04 11 selecting a version of video that's suitable given your
09:48:09 12 bandwidth. You may have noticed, say, watching a Youtube
09:48:13 13 video, that sometimes you get a very good picture and sometimes
09:48:17 14 it's pretty fuzzy. You're actually getting a different version
09:48:21 15 of the video depending on how much bandwidth you have. So
09:48:24 16 adaptive bitrate technology, which was launched in the early
09:48:30 17 '90s, is a way of having your device select a version that's
09:48:34 18 suitable, depending on how much bandwidth you've got.

09:48:38 19 Now, this started in '92 with a paper by a man named
09:48:42 20 Delgrossi, and then the University of Carolina, Dr. Kevin
09:48:46 21 Jeffay, who is sitting here in the courtroom and will be a
09:48:48 22 witness in the case he was one of the earlier developers of
09:48:53 23 this technology and saw it along the way. And, again, in 1998
09:48:57 24 RealNetworks introduced a product. In 2002 Microsoft did.
09:49:05 25 This product was so commonly used that, by 2003, there was

09:49:09 1 already a text book that was applying the products -- applying
09:49:12 2 the technology. And you can see in 2004 an inventor named
09:49:17 3 Seckin applied for a patent. We're going to be talking about
09:49:21 4 her patent application in a moment. That was years before
09:49:27 5 Voxer was even formed.

09:49:31 6 Now, I think most folks know that Facebook has many
09:49:34 7 different features. There's a friends feature, groups.
09:49:39 8 There's many different groups you can join. There's a feed
09:49:42 9 that people can scroll through. You can buy things on
09:49:44 10 Facebook. The point is there are many features on Facebook
09:49:47 11 beyond Facebook Live. And by the time Facebook Live came
09:49:51 12 along, Facebook was already successful and had millions and
09:49:56 13 billions of users.

09:49:57 14 Here's a little timeline for Facebook which shows
09:49:59 15 that, starting in '04, they continually introduced new
09:50:02 16 features. And then in '06 the news feed. That's basically
09:50:07 17 your friends and groups scroll that comes on your -- on your
09:50:12 18 app. In 2007 they adopted -- they launched video. Now, that's
09:50:22 19 not live video. That's prerecorded video like you see on
09:50:30 20 Youtube and so on. But that was launched in '07. The
09:50:34 21 Marketplace as well. Facebook Chat in '08, Facebook Messenger
09:50:37 22 in 2011. And, as I said, the Facebook Live product was
09:50:40 23 independently developed by Facebook engineers, not using any
09:50:44 24 Voxer patents.

09:50:46 25 Now, when these parties met and talked in 2011 and

09:50:50 1 '12, the focus of it was on voice messaging, not video, because
09:50:56 2 Voxer didn't have a live streaming video product. They had a
09:51:01 3 walkie-talkie app which, as you can see from their own
09:51:06 4 material, it's an app that turns your smart phone into a walk
09:51:11 5 walkie-talkie.

09:51:13 6 It was a voice app, not a video app, and these
09:51:18 7 discussions had nothing to do with Facebook Live video or
09:51:24 8 Instagram Live video which was still off in the future. They
09:51:30 9 had to do with the possibility of adding voice to the instant
09:51:34 10 messaging system that Facebook had at the time, which was
09:51:37 11 called Messenger.

09:51:39 12 And, in fact, as Mr. Katis is going to concede during
09:51:43 13 the trial, Voxer never did develop the ability to send
09:51:47 14 real-time video messages. That never happened. What Voxer was
09:51:52 15 offering, and all it has ever offered, is a voice app, not a
09:51:59 16 livestreaming video product.

09:52:01 17 And maybe the best evidence of that is this e-mail
09:52:03 18 which is an internal Facebook e-mail from that time, and you
09:52:09 19 can see that the Facebook folks are talking about what we
09:52:13 20 really want is VOIP for iOS. VOIP is Voice over Internet. iOS
09:52:21 21 is Apple. That's the operating system for Apple phones. They
09:52:25 22 were trying to develop a voice product for Apple phones. And
09:52:31 23 they say we want to find the shortest path to that, and it
09:52:37 24 turns out we might be able to build it ourselves. Again, we're
09:52:42 25 talking about voice technology, and they had some hesitation

09:52:46 1 about whether or not the Voxer folks could really support that
09:52:48 2 effort. That was in 2012. And, as you saw, Facebook told
09:52:52 3 Voxer, sorry, we're not interested.

09:52:55 4 Now let's fast-forward a little bit to 2015. These
09:52:59 5 are two of the Facebook engineers that led the development team
09:53:02 6 that build Facebook Live, and they'll be here to testify to the
09:53:06 7 work that they and their teams did. They'll talk about the
09:53:10 8 problems they faced, the challenges of developing a system like
09:53:14 9 this, and the solutions they adopted to overcome them.
09:53:21 10 Mr. Capra, who is an engineering manager, led the product team,
09:53:26 11 so he was developing the design, the look and feel, how do
09:53:31 12 creators use it, how do fans use it, what does it look like.
09:53:36 13 And Mr. Mathur led the infrastructure team.

09:53:38 14 They built the guts of Facebook Live. And he'll talk
09:53:42 15 about the problems they had and how they overcame them. But,
09:53:46 16 critically, they will testify that neither they nor anyone on
09:53:51 17 the development teams either saw, used, or had any awareness of
09:53:55 18 Voxer patents.

09:53:56 19 So what's the timeline for developing the product?
09:54:01 20 It started in 2014. Facebook had a feature called Mentions for
09:54:06 21 Celebrities, and the folks running Mentions wanted to find a
09:54:11 22 better way for celebrities to connect with the fans. And they
09:54:18 23 thought that a live video product might be a good way to do it.

09:54:24 24 So in April of 2015, they organized an engineering
09:54:27 25 day called "Coding Under the Stars." A group of engineers met

09:54:32 1 on the roof of a Facebook building, and they spent a full day
09:54:36 2 trying to develop a prototype for livestreaming. You'll hear
09:54:40 3 this referred to, ironically, as a "hackathon." Well,
09:54:45 4 hackathon in this context doesn't mean stealing -- breaking
09:54:48 5 into somebody's computer. It means spending a full day with a
09:54:54 6 group in trial and error trying to develop a prototype, and
09:54:57 7 they did.

09:54:57 8 And so by August of 2015 they were ready for a live
09:55:00 9 celebrity launch, which you'll see in a minute with Dwayne
09:55:03 10 Johnson, that goes by "the Rock." And in April of 2016 they
09:55:09 11 launched publicly. And by that I mean any user could use
09:55:12 12 Facebook Live as of then.

09:55:13 13 The big problem they were trying to solve wasn't the
09:55:16 14 basics of livestreaming video. It was: What do you do with
09:55:21 15 the thundering herd? If you're going to make live video
09:55:25 16 available to thousands or millions of people, how do you set up
09:55:29 17 a system that can handle that if you've got that many people
09:55:34 18 all at once trying to watch the video?

09:55:37 19 Here's a picture of the Coding Under the Stars on the
09:55:40 20 left. Mr. Mathur was there, and he'll be testify about that.
09:55:43 21 And on the right is the prototype that the engineers developed
09:55:47 22 that day, and Mr. Mathur is the one that will introduce that
09:55:50 23 and explain what they did.

09:55:53 24 So that was April. By August this was good enough to
09:55:57 25 showcase with Dwayne Johnson. And let's just watch a few

09:56:01 1 minutes of the launch, the original live launch, of the
09:56:05 2 celebrity version of Facebook Live.

09:56:08 3 (Video played)

09:56:08 4 MR. VAN NEST: So that's The Rock. And that was in
09:56:11 5 August of 2015, and Mr. Capra supervised that launch and he'll
09:56:17 6 be here to testify all about that.

09:56:20 7 Now, after Facebook Live launched, as you heard
09:56:23 8 little bit earlier today, Mr. Katis came back to Facebook with
09:56:27 9 this e-mail offering to sell or license the technology. And he
09:57:00 10 says in an e-mail to Stan Chudnovsky at Facebook: "Here's an
09:57:04 11 overview deck and a more detailed IP statement that highlights
09:57:08 12 some of our key patents. As we discussed, we're getting
09:57:14 13 inbound interest." That means people are pursuing us. "But if
09:57:21 14 we go down that road, we'd rather start with someone like
09:57:24 15 yourselves that we feel we share common values and culture
09:57:29 16 with."

09:57:29 17 This was a very friendly e-mail. We share values and
09:57:33 18 culture with you. You don't see any claim of infringement or
09:57:36 19 claim of copying or claim that you're doing anything wrong. We
09:57:43 20 share values with you, and we'd like to sell you our
09:57:48 21 technology.

09:57:49 22 Now, you didn't see this. This was Mr. Stan
09:57:53 23 Chudnovsky's response. His response was very open and candid.
09:57:56 24 His response was, "As you mentioned, you have great IP for the
09:58:03 25 space that Voxer is in. That said, all of our properties are

09:58:07 1 doing something completely different, and we currently have no
09:58:11 2 plans to enter into different territories."

09:58:14 3 Very straightforward. We're in a different space
09:58:17 4 than you are. And Mr. Katis didn't disagree with that. Here's
09:58:21 5 his response on the top. "All good, Stan. Thanks for
09:58:25 6 forwarding it on. Would love to grab lunch again sometime."

09:58:29 7 So this wasn't anything like a claim of infringement.
09:58:34 8 This was an effort to sell or license your technology, a very
09:58:39 9 friendly exchange, indeed.

09:58:41 10 Let's go back to our timeline, because everything
09:58:44 11 we've talked about so far, the early adoption of these
09:58:48 12 technologies, the launch of Facebook, the meetings in 2012, and
09:58:54 13 the live launch, all of these things took place before either
09:58:57 14 of the two patents in this lawsuit were applied for. So by the
09:59:02 15 time they applied for the '270 in 2017 or the '557 in 2018,
09:59:08 16 Facebook Live had been designed, launched, and built.

09:59:11 17 Our second key point of evidence is the technology in
09:59:14 18 Facebook Live's products is fundamentally different from
09:59:23 19 anything in the Voxer's patents. There is no patent
09:59:26 20 infringement.

09:59:27 21 These companies were pursuing different goals.
09:59:31 22 Voxer's goal was to improve communications between identified
09:59:34 23 recipients, where guaranteed delivery was important. It was a
09:59:40 24 messaging system to ensure that a message got through. That's
09:59:43 25 not what Facebook was trying to accomplish. Facebook's was a

09:59:49 1 broadcast system.

09:59:50 2 Facebook was trying to build a broadcasting system
09:59:54 3 that was capable of making live video available to millions of
10:00:01 4 people who could view it upon request. There was no guarantee
10:00:04 5 that anyone would receive it. It was available upon request,
10:00:09 6 but the user had to request it. So, again, you see there the
10:00:17 7 user on the right is making a request.

10:00:20 8 Now, this is a patent infringement case, and you're
10:00:23 9 going to get some very detailed instructions from Judge Yeakel
10:00:27 10 later on. But your main job is to determine whether the
10:00:30 11 Facebook or Instagram Live products infringe the patents. And
10:00:33 12 the bottom line of that is Voxer has the burden to prove that
10:00:36 13 every element in the patent claim is found in the Facebook Live
10:00:40 14 or Instagram Live products. Every element.

10:00:43 15 So I prepared this kind of simple example since it's
10:00:49 16 football season. If someone has a patent on a volleyball or a
10:00:53 17 soccer ball and the elements are it's made of leather, stitched
10:00:58 18 together, filled with air, and round, then you have to show
10:01:03 19 that the defendant's product has all those elements. Two out
10:01:06 20 of three are not enough. Three out of four are not enough. So
10:01:10 21 the football is made of leather, yep, stitched together, yep,
10:01:14 22 filled with air, yep, but not round. So there's no
10:01:18 23 infringement.

10:01:18 24 That's the analysis that you're going to be applying
10:01:25 25 to this technology. I wish it were as simple as a soccer ball

10:01:30 1 or football, but this is what we have, and we're going to work
10:01:33 2 through it with the experts and the testimony.

10:01:35 3 So let's talk about the two patents. This is the
10:01:39 4 '270. It was applied for in May of 2017, and it claims a
10:01:43 5 method for delivering video streaming to intended recipients
10:01:46 6 using a recipient identifier.

10:01:48 7 What does that mean? Here are the claims. There's
10:01:52 8 lots of words here, and our experts will -- will discuss them
10:01:56 9 with you. But, as you can see from my red checkmarks, there
10:02:00 10 are three separate elements that are not found in Facebook
10:02:04 11 Live, because the patent requires sending a recipient
10:02:09 12 identifier to an intended recipient when the video is
10:02:13 13 transmitted and determining a location to which to deliver the
10:02:17 14 video using that recipient identifier. It's a push system, if
10:02:22 15 you will. It pushes the video out to an intended recipient to
10:02:28 16 make sure there is a reliable delivery.

10:02:31 17 That's not how Facebook Live works at all. On the
10:02:36 18 left I'm showing the Voxer system, which is my EMT captain here
10:02:43 19 on the left, she is sending out messages to identified
10:02:46 20 recipients that are going out to their IP addresses. It's a
10:02:52 21 push system to make sure that, in an emergency, or in battle or
10:02:57 22 wherever type of crisis you have, the message is delivered.

10:03:02 23 That's very different from Facebook Live or Instagram
10:03:04 24 Live. That's a broadcast system. It's a broadcast in which
10:03:09 25 the video is made available upon request, no recipient

10:03:14 1 identifier is used, and the video is delivered only to people
10:03:19 2 who make a request. It's available upon request. So you can
10:03:24 3 see it's a pull system. You have to pull it. That's what
10:03:30 4 we're showing on the right. The fellow at the desk is making a
10:03:36 5 request and pulling the video to his desktop. And there's the
10:03:39 6 other two don't care.

10:03:41 7 Now, the patent describes in detail the problem it's
10:03:45 8 trying to solve: The need for reliable delivery of critical
10:03:49 9 messages in a crisis. You can see there this is language from
10:03:54 10 the patent itself. Tactical communications are therefore
10:03:57 11 plagued with several basic problems. There's no way to
10:04:01 12 guarantee delivery of messages. That's one of the things that
10:04:07 13 they're trying to achieve. And the answer is: When sending a
10:04:13 14 message as part of a conversation associated with a number of
10:04:16 15 people, all of the contacts receive the message. The claims in
10:04:20 16 the patent, the '270, the identifier, and the identified
10:04:24 17 recipient, are intended to create reliable delivery.

10:04:28 18 So let's go back to my example. My EMT captain is
10:04:33 19 communicating to several folks on the team, and she's using an
10:04:37 20 identifier to get a location to send the video to. And she
10:04:43 21 pushes that video out to make sure that they -- that they
10:04:47 22 receive it. Facebook, on the other hand, doesn't do it that
10:04:50 23 way. It's a broadcast that's made available to millions of
10:04:55 24 people, but only those who request it and pull it to their
10:05:00 25 device will see it. That's the way it is.

10:05:03 1 Now, obviously, in a battlefield situation or in an
10:05:06 2 emergency, it wouldn't make sense to send a Facebook Live video
10:05:11 3 out on broadcast and simply hope that somebody decides to watch
10:05:15 4 it. It's not intended for that purpose. And, therefore,
10:05:20 5 because it doesn't meet all the elements of the '270, there's
10:05:24 6 no infringement. That's the '270 patent, and you'll hear a lot
10:05:29 7 more about that.

10:05:30 8 Two '557 was applied for in 2018, even later. It
10:05:35 9 claims a method for using what I mentioned, adaptive bitrate
10:05:41 10 streaming, in a live video system. Now, as we reviewed
10:05:45 11 earlier, adaptive bitrate streaming has been around since the
10:05:49 12 '90s. So there are two issues on this patent. One issue is:
10:05:54 13 Should it even have issued from the patent office in the first
10:05:59 14 place, or did someone else do it before Voxer did? And the
10:06:03 15 second issue is: Even if it's valid, is Facebook or Instagram
10:06:07 16 using the technology?

10:06:08 17 Let's take that second issue first. Here are the
10:06:11 18 claims of the '557. The '557 claims a method for performing
10:06:16 19 this adaptive bitrate technology by selecting a video message
10:06:21 20 by the video message service infrastructure. Now, what does
10:06:27 21 that mean? That requires that the servers in your system that
10:06:31 22 are part of your infrastructure, they measure the bandwidth
10:06:34 23 between the servers and the user's device -- a phone, tablet, a
10:06:44 24 laptop -- and they select a version of the video that is
10:06:49 25 appropriate based on bandwidth. If there's lots of bandwidth,

10:06:53 1 you can send a very -- a high-quality video and see great
10:06:59 2 resolution. If it's low bandwidth, you send a lower-quality
10:07:02 3 version and it's kind of fuzzy. That's what this claim is all
10:07:07 4 about, and the patent requires that this be done by the
10:07:10 5 infrastructure of the servers themselves. That is, again, not
10:07:13 6 how Facebook Live or Instagram Live work.

10:07:15 7 In these systems it's the client device -- your
10:07:18 8 laptop, your phone, your desktop, your tablet -- that measures
10:07:22 9 the bandwidth and selects a version of the video. It's not
10:07:26 10 done by the Facebook servers, and the Facebook servers provided
10:07:31 11 the same service to Instagram, too. So it's not done by
10:07:38 12 Facebook servers. In the Facebook Live and Instagram Live
10:07:42 13 systems, it's done differently. Why? There's two reasons.

10:07:46 14 If you're building a broadcast system where you
10:07:48 15 intend to send and make available to people, thousands or
10:07:54 16 millions of viewers, then the Facebook servers could be
10:07:59 17 overwhelmed by folks clamoring to request the video. That's
10:08:06 18 one reason that this task is placed on the user's device -- the
10:08:11 19 phone, the laptop, the tablet.

10:08:13 20 The second reason is the device knows best what it
10:08:17 21 needs. Your device knows how big the screen is, how much
10:08:22 22 resolution you can accommodate, how many pixels you can
10:08:25 23 actually deal with. So in the Facebook and Instagram system,
10:08:28 24 this task is dedicated to the client device, and that's why the
10:08:34 25 '557 patent is not practiced by Facebook Live or Instagram

10:08:37 1 Live.

10:08:38 2 Now, I promised a second issue on this one, and that
10:08:41 3 is that Voxer wasn't the first to develop whatever invention
10:08:45 4 there is in the '557. Remember, the patent video that you-all
10:08:50 5 saw yesterday said that, to be entitled to a patent, you have
10:08:55 6 to be the first to invent the idea. To get the patent, you
10:08:59 7 have to be the first. If someone beats you to it, you can't
10:09:03 8 get a patent because it's already out there and published.

10:09:10 9 Now, what I'm showing here is a patent application by
10:09:13 10 an inventor named Seckin, and she applied for a patent and
10:09:19 11 published it back in 2004. And there's no dispute in the case
10:09:24 12 that the Seckin patent application is earlier than Voxer.
10:09:27 13 There's no dispute that it qualifies as prior art and qualifies
10:09:30 14 as an invention, and the examiner in the patent office that
10:09:35 15 evaluated the '557 patent wasn't aware of the Seckin
10:09:39 16 application. They weren't aware of the Seckin application, so
10:09:46 17 they didn't consider it. You'll be the first to consider the
10:09:49 18 Seckin application in connection with the '557.

10:09:54 19 And what does it disclose? Her's a figure from the
10:09:58 20 patent itself. The handwriting is original. And, as you can
10:10:02 21 see, it describes a video streaming system using adaptive
10:10:06 22 bitrate technology with every single element that Voxer is
10:10:10 23 claiming on '557.

10:10:13 24 So on the left, that cloud is a little dark, but it
10:10:18 25 says "still image audio video." So we're talking about video.

10:10:21 1 And up there in the top left, "live content." And we're
10:10:25 2 streaming it to devices on the right, a phone, a laptop, looks
10:10:33 3 like a desktop. And we're doing it using adaptive bitrate
10:10:36 4 technology. That's what's shown in the middle. And Dr. Jeffay
10:10:41 5 will be here to explain this a little bit, but he's created
10:10:45 6 this simplified version taken right from the patent, and this
10:10:51 7 is how it works. Seckin describes sending live content to a
10:10:56 8 transcoder that creates different versions of the video. The
10:11:01 9 thicker the lines, the better quality, the higher resolution.
10:11:05 10 And the transcoder creates separate versions, and the server
10:11:10 11 selects a version appropriate to the device that will
10:11:12 12 ultimately receive it. Those are the client devices on the
10:11:18 13 right. You've got a phone, maybe a tablet, a desktop, and so
10:11:23 14 on and so forth.

10:11:25 15 This is the second invention. It operates with all
10:11:28 16 the same elements. It discloses all the same features of the
10:11:33 17 '557, which is why we say, and the evidence is going to show,
10:11:36 18 that Seckin was first, she was earlier, and the '557 patent is
10:11:39 19 not valid.

10:11:41 20 All right. My last key point of evidence you've
10:11:45 21 heard a little bit about already. The Voxer technology and
10:11:47 22 patents was not right for Facebook or anyone else in the
10:11:51 23 industry. Let's go back to our timeline now.

10:11:57 24 After Facebook Live launched in 2015, Mr. Katis
10:12:00 25 offered to sell or license, but Facebook said we are not

10:12:08 1 interested. We're doing something different than what your
10:12:10 2 patents provide. Voxer went to the market in 2016 and '17, and
10:12:15 3 they made an effort, a big effort, to sell their technology or
10:12:18 4 license it. They hired bankers. They had their -- their
10:12:25 5 technology valued. They went to the market. But it turns out
10:12:29 6 nobody in the market was interested.

10:12:32 7 This is a partial list of the nearly 100 companies
10:12:36 8 that Voxer attempted to market its technology to. And you can
10:12:41 9 see this is the -- this is who's who, right? This is Cisco,
10:12:45 10 this is Google, this is Qualcomm, this is IBM, this is Yahoo,
10:12:51 11 and so on and so forth. This isn't everybody.

10:12:55 12 But they hired bankers and valuation specialists, and
10:13:02 13 those folks approached all these people. But not a single
10:13:05 14 company, not one, has agreed to license or purchase Voxer's
10:13:10 15 technology. It wasn't right for the industry. Why? It was
10:13:14 16 really, really late. 2017 and 2018 are 20 years after, almost
10:13:19 17 30 years, after this technology first became available.

10:13:24 18 Now, before the lawsuit started and before the
10:13:27 19 parties were in court, Voxer actually had hired valuation
10:13:33 20 specialists to value this technology and what it might be worth
10:13:37 21 to Facebook Live and others, too. In other words, before there
10:13:42 22 was a dispute, as part of their marketing, they hired folks to
10:13:47 23 value their patents, all of them, to others. And you can see
10:13:53 24 here this is created by a company called Houlihan Lokey in June
10:14:00 25 of 2017, before the lawsuit.

10:14:02 1 And I've highlighted the line. They attempted to
10:14:05 2 value Voxer's patent portfolio. And with respect to Facebook
10:14:09 3 Live, they said -- this is Voxer's analyst, Voxer's hired
10:14:15 4 valuation people -- it is worth between 5- and 22.9-million,
10:14:18 5 all-in, all patents. That's the value of it to the market.
10:14:25 6 Now, of course, even that is high because no one was willing to
10:14:30 7 pay even that for this technology. But this is what Voxer
10:14:38 8 believed its portfolio was worth based on the analyst that they
10:14:44 9 retained to help them sell it.

10:14:46 10 There's another piece of evidence that occurred
10:14:48 11 before the lawsuit in the marketplace. They offered to sell
10:14:51 12 the whole company, including all the technology, to Twitter for
10:14:55 13 less than \$20 million. This is an e-mail from a man named
10:15:03 14 Quincy Smith. He worked at Code Advisors. They were a
10:15:06 15 representative of Voxer trying to sell the company. And he is
10:15:09 16 e-mailing a gentleman named Noto at Twitter and saying, "As a
10:15:16 17 favor for me on Tom Katis and Voxer. Your team will not get
10:15:19 18 it, but it's simple IP, less than 20 million and game changer."

10:15:25 19 So, again, before the lawsuit started, Voxer itself
10:15:28 20 valued its technology, and all of it, at less than 20 million.
10:15:32 21 And, again, that was high, because Twitter wasn't interested
10:15:36 22 and neither was anyone else. That's why this \$174 million
10:15:41 23 number you heard about is absolutely unrealistic, out of touch
10:15:48 24 with the market evidence, and completely unreasonable. Even
10:15:55 25 if -- even if you found infringement, their position on money

10:15:58 1 is way out of line, because the marketplace evidence is that
10:16:02 2 the whole company was offered for less than 20 million, their
10:16:08 3 own valuation of the entire portfolio is in range of 5 to 22,
10:16:13 4 and here they are now asking you for that enormous sum of
10:16:16 5 money.

10:16:17 6 Now, before I sit down, I want to just introduce some
10:16:22 7 of the folks on my team that you'll be hearing from. And so
10:16:31 8 I'll start with Mike Jones that you heard from yesterday. He
10:16:34 9 was the one asking the questions. Christa Anderson, David
10:16:38 10 Silbert, Gene Paige, Paven Malhotra, and our client
10:16:41 11 representative John Poffenberger. And I can't leave out our
10:16:44 12 trusty legal assistants Brent Haugeberg and Laura Lind, who are
10:16:46 13 going to help us keep track of all the documents and everything
10:16:49 14 else that's coming along.

10:16:51 15 So I'll say thank you again. But before I sit down,
10:16:54 16 I want to echo something that Judge Yeakel said yesterday, and
10:17:00 17 that is: Please keep an open mind as you listen to the
10:17:04 18 evidence, because since Voxer is the plaintiff, they get to go
10:17:10 19 first, they have the burden of proof on infringement and so on
10:17:14 20 and so forth, and so they get the opportunity to go first. Our
10:17:17 21 presentation will be later in the week, so please keep an open
10:17:20 22 mind until you've heard all the evidence.

10:17:22 23 And thanks once again for your time and attention and
10:17:26 24 for being here to help us. Thank you.

10:17:30 25 THE COURT: Thank you. Ladies and gentlemen, this is

10:17:33 1 a convenient stopping point for our morning recess. We'll be
10:17:36 2 in recess for 15 minutes.

18:00:00 3 (Jury recessed)

10:17:40 4 THE COURT: All right. You may be seated and be at
10:17:42 5 ease for just a moment before we take our recess. I want to
10:17:46 6 get the notebooks we've been discussing distributed to the
10:17:51 7 jurors at this point as the evidence begins. I'm going to go
10:17:55 8 ahead and do what I suggested that I might do yesterday. We
10:17:58 9 will include the two patents, the asserted patent claims, and
10:18:43 10 the verdict form, but I'm going to omit the jury instructions
10:18:47 11 from the notebooks. They're lengthy. I don't have a problem
10:18:51 12 with them, but I'm afraid that the jury will get involved in
10:18:55 13 reading the jury instructions and not be involved in listening
10:18:59 14 to you-all as they should be. And I'll have plenty of time to
10:19:04 15 read them the instructions, and they can have them at the end.

10:19:06 16 Does anybody have great outcry of not doing it that
10:19:09 17 way?

10:19:09 18 MR. VAN NEST: We don't have any outcry, Your Honor.

10:19:11 19 THE COURT: How about from the plaintiff? You all
10:19:13 20 right with that?

10:19:14 21 MR. STONE: We are, Your Honor.

10:19:14 22 THE COURT: Okay. Then let's get those ready so the
10:19:20 23 jurors can have them when they get back. And then is the
10:19:23 24 plaintiff ready to call the plaintiff's first witness?

10:19:26 25 MR. STONE: We are, Your Honor.

10:19:27 1 THE COURT: All right. Then we'll be in recess is
10:19:29 2 until a little after 10:30. Thank you-all.

18:00:00 3 (Recess)

10:19:37 4 (Open court, no jury)

10:19:38 5 THE COURT: Couple of quick things before we bring
10:19:40 6 the jurors in. Before the plaintiff calls the plaintiff's
10:19:42 7 first witness, I'm going do admit the exhibits that you-all
10:19:45 8 have indicated in your joint notice of pre-admitted exhibits,
10:27:20 9 although they're not pre-admitted because I haven't admitted
10:28:51 10 them yet. They're soon to be pre-admitted.

10:36:13 11 And then I'm also, because I do this at the beginning
10:36:15 12 of trial, I'm going to read your stipulated facts to the jury
10:36:20 13 so they will already be in evidence. And what I'm not going to
10:36:24 14 read, though, is in your stipulations over on H through N,
10:36:28 15 which are priority dates, I'm not going to read for the purpose
10:36:33 16 of this litigation because I think the jury knows it's for this
10:36:38 17 litigation. And I know you did that so you're not waiving that
10:36:41 18 for any other purpose, but I just rule right now, just because
10:36:49 19 I'm not going to say that doesn't mean I'm admitting the
10:36:56 20 stipulation for anything other than what we're doing in this
10:36:59 21 courtroom the next two weeks.

10:37:00 22 MR. POWELL: Thank you, Your Honor.

10:37:01 23 MS. ANDERSON: Thank you, Your Honor.

10:37:03 24 THE COURT: Anything else we need to take up before
10:37:03 25 we get the jury in?

10:37:03 1 MR. POWELL: Your Honor, the plaintiff does.

10:37:05 2 THE COURT: What?

10:37:05 3 MR. POWELL: The plaintiff does. May I be heard
10:37:07 4 quickly?

10:37:08 5 THE COURT: Yes.

10:37:08 6 MR. POWELL: Okay. Sorry I'm starting to sound like
10:37:12 7 a broken record, but we've got a couple of new songs to play
10:37:15 8 this time. Opening the door on MIL 3, here are the three ways
10:37:18 9 they did it in their opening. They said Voxer does not use its
10:37:19 10 own video technology. The reason they don't use it, Facebook
10:37:27 11 killed their business.

10:37:28 12 They say Facebook was able to build the video
10:37:33 13 technology quickly. The way they did that, they stole it from
10:37:36 14 Voxer.

10:37:37 15 Third, they said Twitter only offered 20 million.
10:37:40 16 The reason they only offered 20 million, Facebook killed the
10:37:44 17 business. How did they kill it? They removed us from the
10:37:47 18 Facebook platform.

10:37:48 19 So we think they've opened the door. Mr. Katis
10:37:50 20 should be allowed to testify that, following the conversations
10:37:53 21 in March of 2012, Facebook went silent, Zuckerberg went to
10:37:56 22 China, decided to copy, they built their own competing system,
10:38:00 23 they came back in January, launched it, and killed Voxer.

10:38:03 24 THE COURT: All right. I'm going to review the reply
10:38:06 25 brief I get in the morning at 9:00. I'll get it at 9:00. I'm

10:38:09 1 going to review it. At sometime either in the morning recess,
10:38:14 2 because I might read it if I think the witnesses are
10:38:16 3 particularly boring after I get it. Otherwise, I won't read it
10:38:20 4 until the recess. And I will set an argument. And if I allow
10:38:23 5 the testimony, you'll be allowed to recall your witness and
10:38:27 6 develop it.

10:38:27 7 MR. POWELL: Thank you, Your Honor. Two other small
10:38:29 8 issues. Motion in Limine Number 1 had to do with excluding
10:38:34 9 reference *inter partes* reviews that were filed as to the
10:38:39 10 patents-in-suit. The defense raised in their opening that
10:38:46 11 Seckin was not considered by the patent office. They had every
10:38:49 12 opportunity to present Seckin to the patent office in their
10:38:52 13 *inter partes* review. They chose not to. We are now, I believe
10:38:55 14 fairness dictates, entitled to tell them about the IPR and
10:38:58 15 Facebook's choice, conscious choice, not to present that to the
10:39:00 16 patent office. They participated in the prosecution history of
10:39:04 17 this patent.

10:39:04 18 THE COURT: Response?

10:39:05 19 MR. VAN NEST: Your Honor, I don't think Mr. Katis is
10:39:07 20 going to be talking about that. Frankly, that's the first I've
10:39:11 21 heard that that's somehow opening the door. Seckin wasn't in
10:39:15 22 the IPR. It wasn't a part that was presented to the patent
10:39:18 23 office. It wasn't something the patent office considered. And
10:39:21 24 the basis of --

10:39:22 25 THE COURT: I didn't think we got into what was said

10:39:26 1 to the IPR. We got the Seckin patent as not having been
10:39:30 2 considered in the first instance by the PTO --

10:39:32 3 MR. VAN NEST: That's all I said.

10:39:34 4 THE COURT: -- when the Voxer patents were up. So
10:39:36 5 that's overruled at this point.

10:39:39 6 MR. POWELL: We'll see what the evidence shows,
10:39:41 7 Your Honor.

10:39:41 8 THE COURT: We will see what the evidence shows.

10:39:42 9 MR. POWELL: The other request would be for leave to
10:39:44 10 submit a proposed jury instruction clarifying what the meaning
10:39:52 11 of a priority date is. Obviously, the defense is trying to
10:39:55 12 confuse the jury as to what it means.

10:39:56 13 THE COURT: No. Wait a minute. I can go along with
10:40:00 14 you on your arguments and examine them on the merits. I don't
10:40:03 15 want you to hear you say things to me like obviously what the
10:40:06 16 defense is trying do.

10:40:07 17 MR. POWELL: Okay.

10:40:08 18 THE COURT: I tried a lot of cases, not patent cases,
10:40:11 19 as a lawyer. Don't give me the lawyer banter about being
10:40:15 20 critical of one another. Give me what your argument is. I can
10:40:17 21 draw my own conclusions as to who I think is overreaching at
10:40:19 22 any given point.

10:40:20 23 MR. POWELL: Thank you, Your Honor.

10:40:22 24 THE COURT: Now, give me the gist of your argument.

10:40:24 25 MR. POWELL: We believe that the jury is being led to

10:40:26 1 believe that the filing of the two patents-in-suit in 2018
10:40:32 2 means that the Facebook systems that were launched in 2016 are
10:40:40 3 themselves prior art to the patents. We think it's going to be
10:40:43 4 important to explain that continuation patents such as we have
10:40:47 5 here are deemed to have been filed in 2008 when the original
10:40:50 6 application was filed, and they get the benefit of that
10:40:55 7 priority. And it needs to be explained to the jury that, even
10:40:59 8 though the products came out before these patents were filed,
10:41:02 9 they're deemed to have been filed earlier.

10:41:04 10 THE COURT: I've got a whole group of smart people
10:41:06 11 sitting out here in front of me. Take one of the smart people
10:41:09 12 from each side and have them discuss whether you can come up
10:41:11 13 with some agreed language for the Court's Charge.

10:41:13 14 MR. POWELL: We'd be happy to do that. Thank you,
10:41:18 15 Your Honor.

10:41:18 16 THE COURT: All right. Now are we ready for the
10:41:19 17 jury?

10:41:20 18 MR. STONE: Yes, Your Honor.

10:41:20 19 THE COURT: Bring in the jury.

10:41:23 20 (Open court, jury present)

10:41:23 21 THE COURT: Ladies and gentlemen of the jury, you'll
10:41:24 22 notice the notebooks that we've been referring to for your use
10:41:28 23 during the trial are on your chairs. Those are your notebooks.
10:41:31 24 You can mark on them. You can do whatever you want to.
10:41:34 25 There's nothing magic with it. You can search your notes in

10:41:37 1 there. They will be taken up at the end of the trial. They
10:42:30 2 are not souvenirs of the trial. They are for you to use during
10:42:33 3 this trial.

10:42:33 4 Before the plaintiffs call the plaintiff's first
10:42:36 5 witness, you've heard me in giving instructions to you talk
10:42:39 6 about things that you must accept as evidence, one of those
10:42:43 7 being anything that the parties have stipulated to. The
10:42:47 8 parties have stipulated to certain facts in this case. I'm
10:42:51 9 going to read them to you, and you will take these facts as
10:42:55 10 true as if you heard evidence on them.

10:42:57 11 1. This court has jurisdiction over the parties and
10:43:02 12 all claims and defenses in this action.

10:43:04 13 2. Voxer is a Delaware -- Voxer, Inc. is a Delaware
10:43:08 14 corporation with its principal place of business at 199 Brian
10:43:12 15 Street, Suite 900, Dallas, Texas 75201-3140.

10:43:19 16 3. Voxer IP, LLC is a Delaware limited liability
10:43:24 17 company and the legal owner by assignment of the asserted
10:43:29 18 patents. Voxer IP, LLC is a wholly owned subsidiary of
10:43:36 19 Voxer, Inc.

10:43:38 20 4. Meta Platforms, Inc. formally known as Facebook,
10:43:44 21 Inc., is a Delaware corporation with a principal place of
10:43:48 22 business at 1601 Willow Road, Menlo Park, California.

10:43:53 23 5. Instagram, LLC is a Delaware limited liability
10:43:57 24 company and a wholly owned subsidiary of Meta Platforms, Inc.

10:44:04 25 6. Defendants Meta Platforms, Inc., formally known

10:44:09 1 as Facebook, Inc., and Instagram, LLC own and operate the
10:44:13 2 facebook.com and instagram.com websites and make available the
10:44:20 3 Facebook Live and Instagram Live services, as well as the
10:44:23 4 Facebook and Instagram applications for mobile devices.

10:44:28 5 7. The application leading to the '030 patent was
10:44:34 6 filed February 15th, 2008, and the '030 patent was issued
10:44:44 7 May 15th, 2012 by the U.S. Patent Office.

10:44:48 8 8. The '030 patent is entitled to a priority date of
10:44:57 9 no earlier than June 28th, 2007.

10:45:00 10 9. The application leading to the '969 patent was
10:45:06 11 filed April 6th, 2016, and the '969 patent was issued on
10:45:13 12 April 25th, 2017 by the U.S. Patent Office.

10:45:18 13 10. The '969 patent is entitled to a priority date
10:45:23 14 of no earlier than June 28th, 2007.

10:45:29 15 11. The application leading to the '270 patent was
10:45:34 16 filed on May 2nd, 2017, and the '270 patent was issued on
10:45:41 17 November 28th -- pardon me -- November 27th, 2017 by the U.S.
10:45:46 18 Patent Office.

10:45:48 19 12. The '270 patent is entitled to a priority date
10:45:53 20 of no later than June 28th, 2007.

10:45:56 21 13. The application leading to the '557 patent was
10:46:01 22 filed on October 16th, 2018, and the '557 patent was issued on
10:46:08 23 December 17th, 2019 by the U.S. Patent Office.

10:46:12 24 14. The '557 patent is entitled to a priority date
10:46:18 25 of no earlier than June 28th, 2007.

10:46:22 1 15. On January 7th, 2020, Voxer filed this patent
10:46:28 2 infringement action against Defendant.

10:46:30 3 At this time the plaintiff may -- well, pardon me.
10:46:35 4 Also I'm going admit for your consideration at this time
10:46:40 5 certain exhibits.

10:46:50 6 The following exhibits are admitted into evidence:

10:46:53 7 P-3, P-4, P-5, P-6, P-17, P-18, P-19, P-44, P-47,
10:47:10 8 P-54, P-145, P-402, P-433, P-542, P-556, P-679, P-681, P-737,
10:47:21 9 P-743, P-744, P-746, P-752, P-784, P-802, P-803 P-804, P-827,
10:47:38 10 and P-828.

10:47:40 11 In addition, the following exhibits are admitted into
10:47:48 12 evidence:

10:47:49 13 DTX98, DTX154, DTX155, DTX156, DTX162, DTX163,
10:48:06 14 DTX164, DTX165, DTX166, DTX167, DTX171, DTX172, DTX185, DTX215,
10:48:25 15 DTX233, DTX234, DTX249, DTX276, DTX438, DTX440, DTX607,
10:48:40 16 DTX607-A, DTX607-B, DTX607-C, and DTX-618.

10:48:52 17 Now the plaintiff may call the plaintiff's first
10:48:55 18 witness.

10:48:55 19 MR. STONE: Your Honor, the plaintiff calls
10:48:57 20 Thomas Katis.

10:48:59 21 (Witness sworn)

10:48:59 22 *****

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10:50:24 1 Airborne school, basic noncommissioned officer course, Special
10:50:27 2 Forces selection assessment, Special Forces qualification
10:50:30 3 course, and SERE school.

10:50:31 4 Q. And what was your focus in Special Forces?

10:50:34 5 A. So every Green Beret has to have one of four specialties.
10:50:42 6 Everyone is either a weapons specialist or an engineer or medic
10:50:47 7 or communications. And based on my initial aptitude testing,
10:50:52 8 they encouraged me to go into communications, which I did.

10:50:56 9 Q. And as a communications sergeant, what were you
10:50:59 10 responsible for?

10:51:01 11 A. Everything on the team that involved any type of
10:51:04 12 electronics or communications of any type.

10:51:08 13 Q. Could you give the jury some examples, please.

10:51:13 14 A. Sure. So I mean, obviously, programming and operating
10:51:17 15 radios, calling everything from close air support, medevac,
10:51:20 16 coordinating with other units. The -- I learned everything
10:51:24 17 from intent theory to, you know, how to use all the different
10:51:27 18 types of frequencies, HF, UHF, VHF, sat-com, cryptography, a
10:51:33 19 lot of different systems.

10:51:34 20 Q. Now, when did you leave your first stint?

10:51:36 21 A. At the end of 1990.

10:51:38 22 Q. And what did you do then?

10:51:40 23 A. I went to college.

10:51:42 24 Q. And where did you go?

10:51:43 25 A. I started at the University of North Carolina at

10:51:46 1 Charlotte. And after a year I applied to Yale and was
10:51:50 2 fortunate enough to get in.

10:51:51 3 Q. And what did you study at Yale?

10:51:53 4 A. I applied for a selective major that was called ethics,
10:51:59 5 politics, and economics, and I did my senior thesis on the
10:52:03 6 implications of European monetary theory.

10:52:07 7 Q. And did you receive -- did you receive a degree.

10:52:08 8 A. Yes, I did. A bachelor of arts in 1994.

10:52:12 9 Q. And what did you do after Yale?

10:52:14 10 A. My first job after college I was a foreign exchange trader
10:52:16 11 for Citicorp.

10:52:17 12 Q. And what was your work like in that role?

10:52:20 13 A. So trading is quite an electronic technical activity and
10:52:24 14 pretty high-paced and high-stressed. So I was -- I became a
10:52:26 15 senior dealer and managed a book for the bank. But, in
10:52:30 16 addition, I really liked playing with the terminals, and I
10:52:36 17 helped the team reprogram all of our terminals for more
10:52:44 18 efficient call outs and effectiveness of the whole team.

10:52:47 19 Q. Now, did your position at Citicorp change at some time?

10:52:49 20 A. It did. This is mid '90s, and so, you know, Netscape came
10:52:54 21 out, and all of sudden the Internet was sort of a thing. And
10:52:57 22 I, you know, was sort of drawn to it like a moth to a flame.
10:53:00 23 And, you know, the bank wasn't really moving too quickly in the
10:53:05 24 area, and so some friends and I sort of agitated and eventually
10:53:09 25 ended up -- four of us ended founding the Internet group at

10:53:13 1 Citicorp.

10:53:13 2 Q. And what kind of work did you do in that group?

10:53:15 3 A. I ended up in charge of Internet payment systems for the
10:53:20 4 bank.

10:53:20 5 Q. And in that role what kind of work did you perform?

10:53:23 6 A. So I led -- I led a number of pilots and programs with
10:53:28 7 different technology companies. I worked with a bunch of
10:53:32 8 companies that were digicash, cybergash, transactor networks,
10:53:36 9 et cetera. We did programs in e-cash, in secure transaction
10:53:38 10 protocols, and --

10:53:39 11 THE COURT: Mr. Katis, can I ask you a question --

10:53:43 12 THE WITNESS: Yes.

10:53:44 13 THE COURT: -- a request. Please just slow down just
10:53:46 14 a little bit. You can talk faster than I can hear.

10:53:49 15 THE WITNESS: Okay. I'm sorry. I'm excited to be
10:53:53 16 here.

10:53:53 17 Q. (BY MR. STONE) How long were you in that role at Citicorp?

10:53:56 18 A. Until March of '99.

10:54:00 19 Q. And what did you do when you left Citicorp?

10:54:04 20 A. I joined a small startup company out in Silicon Valley
10:54:07 21 called Netcentives.

10:54:07 22 Q. And which kind of business was Netcentives?

10:54:09 23 A. Netcentives was a company that was focused on, like,
10:54:11 24 one-to-one digital marketing systems. We did points-based
10:54:16 25 programs and e-mail direct marketing.

10:54:20 1 Q. And what was your title there?

10:54:23 2 A. Vice-president of business development.

10:54:28 3 Q. How long were you there, sir?

10:54:32 4 A. I was there until shortly before I re-enlisted in the Army

10:54:36 5 after 9/11.

10:54:37 6 Q. And why did you re-enlist?

10:54:40 7 A. I mean, multiple reasons. You know, I'm originally from

10:54:43 8 New York. I had a friend who was killed in the attacks. And,

10:54:48 9 you know, 9/11 was kind of a Pearl Harbor type moment, and I

10:54:52 10 recognized that, because Al Qaeda that was in the mountains of

10:54:57 11 Afghanistan, the types of individuals they would need was --

10:55:00 12 was Green Berets, Special Forces. It was exactly the type of

10:55:04 13 training and capabilities that I had been trained for.

10:55:07 14 And I also knew that, you know, it takes years to

10:55:11 15 create new Green Berets. It takes years to recruit and train

10:55:16 16 and deploy Special Forces personnel. And so I thought I could

10:55:20 17 sort of plug a gap.

10:55:21 18 Q. Now, where were you deployed, sir?

10:55:25 19 A. Afghanistan.

10:55:26 20 Q. And over what time period?

10:55:27 21 A. From summer of '02 through spring of '03.

10:55:32 22 Q. And what kind of work were you performing there?

10:55:34 23 A. Well, I was -- I was a communications sergeant on a

10:55:40 24 Special Forces team. And more specifically while I was there,

10:55:46 25 I became very involved with standing up an Afghan special

10:55:48 1 forces unit.

10:55:49 2 Q. What kind of work was the Afghan special forces unit
10:55:54 3 doing?

10:55:54 4 A. It was referred to as a CTPT or counterterrorist pursuant
10:55:59 5 team. Basically, it was an indigenous unit that you we sort of
10:56:07 6 hand picked from the across the region, put them through our
10:56:10 7 own training, and we'd lead them on long-range missions. And
10:56:16 8 the idea, I mean, this was basically straight out of sort of
10:56:19 9 the Unconventional Warfare Doctrine.

10:56:21 10 You know, we knew that we would be going into
10:56:22 11 villages where they never met an American before, never met a
10:56:29 12 European, never met anybody who wasn't from the area. And we
10:56:32 13 knew that if we walked in with a platoon of Rangers all in
10:56:36 14 Kevlar and helmets, we'd look like invading Martians or
10:56:41 15 something. And so we tried to soften our image. And so
10:56:44 16 instead of going in in force, we'd go with two or three
10:56:48 17 Americans. We'd typically go with a force of 12 to 15 Afghans
10:56:53 18 that we trained up. And that way as we walked into these
10:56:56 19 villages, it was -- it was an easier thing for them to -- to
10:57:01 20 welcome us and to talk with them and get to know them and build
10:57:05 21 relationships across the area.

10:57:08 22 Q. Now, let me show you what we have previously marked as
10:57:12 23 Exhibit P-426, and it should be on the screen in front of you.

10:57:16 24 A. Okay. Not yet.

10:57:17 25 Q. Mr. Katis, do you recognize P-426?

10:57:19 1 A. It was up a second ago.

10:57:21 2 Q. It's going to be in front of you first. We're going to
10:57:24 3 move to have it admitted.

10:57:24 4 THE COURT: Don't show an exhibit that the jury can
10:57:25 5 see until I've admitted it.

10:57:26 6 MR. STONE: We understand that, Your Honor, and so it
10:57:27 7 shouldn't up on any screens, just in front of the witness.

10:57:31 8 THE COURT: But that's all right. As long as it's
10:57:32 9 not exhibited to the jury before you've offered it.

10:57:34 10 MR. STONE: Thank you, Your Honor.

10:57:35 11 Q. Mr. Katis, do you recognize Exhibit P-426?

10:57:40 12 A. Yes, I do.

10:57:40 13 Q. And what is that exhibit?

10:57:42 14 A. This is a picture of me on January 15th, 2003 in
10:57:48 15 Afghanistan. I remember this day very clearly.

10:57:50 16 MR. STONE: And, Your Honor, we'd like to move
10:57:52 17 Exhibit P-426 into evidence.

10:57:53 18 MS. ANDERSON: No objection, Your Honor. Thank you.

10:57:56 19 THE COURT: Plaintiff's Exhibit P-426 is admitted.

10:58:07 20 Q. (BY MR. STONE) Now, when was this picture taken, sir?

10:58:13 21 A. January 15 of 2003.

10:58:15 22 Q. And was this picture taken after some significant event?

10:58:21 23 A. Yes. This was right at the tail end of the biggest ambush
10:58:26 24 we were in in Afghanistan. We had a vehicle blown up, and I
10:58:33 25 had to medevac a couple of my teammates. We were stuck in a

10:58:37 1 kill zone for over two hours.

10:58:39 2 Q. Now, during your time in Afghanistan, did you receive any
10:58:43 3 commendations?

10:58:44 4 A. I was awarded the Bronze Star.

10:58:47 5 Q. Did any of the inspiration behind Voxer come to you during
10:58:51 6 your time there?

10:58:52 7 A. Yes. Very much so. And really specifically from this
10:58:56 8 ambush and our frustrations with military communications during
10:58:59 9 it.

10:58:59 10 Q. And could you explain how that inspiration developed?

10:59:02 11 A. Sure. So, you know, being the one primarily responsible
10:59:07 12 for calling close air support, calling medevac, I had a team
10:59:11 13 frequency for talking to my teammates and figuring out what was
10:59:15 14 going on. I had to call for a quick reaction force, which was
10:59:17 15 a nearby platoon of Rangers.

10:59:19 16 Q. And I would just slow down a little bit so the court
10:59:22 17 reporter can get it all down.

10:59:23 18 A. So I had to call for a quick reaction force, which was a
10:59:27 19 relatively nearby platoon of Rangers. I asked for some
10:59:30 20 assistance. I had to keep my company commander up to date on
10:59:33 21 what's going on. I had to keep the forward operating base and
10:59:37 22 battalion command update.

10:59:38 23 And the way that military radios work is you're one
10:59:41 24 channel at a time, sort of one frequency. And as soon as you
10:59:45 25 flip, like if I flip from my team frequency to call close air

10:59:47 1 support, I'd have no idea what was going on on my team
10:59:50 2 frequency. I'd miss everything. And you never get it back.
10:59:55 3 And if somebody is trying to talk to me on my team, for
10:59:59 4 example, I have no idea because I'm talking to ATAC.
11:00:02 5 And -- so it's a very brittle, static environment
11:00:07 6 where you just -- you don't even know how much you're missing.
11:00:10 7 And -- and so -- so that's sort of the inbound side. It's just
11:00:13 8 you're missing tons of stuff, and you can tell just
11:00:17 9 communication is sort of breaking all over the place.
11:00:19 10 And on the outbound side, every time I'd flip to a
11:00:23 11 new frequency, let's say to call for medevac, there's always
11:00:28 12 somebody talking on the channel. And only one person can speak
11:00:32 13 at a time, and so I have to wait my turn and then exchange call
11:00:37 14 signs, and then, you know, give the information, typically
11:00:41 15 repeat it back or acknowledge. It's a very cumbersome process.
11:00:44 16 And then flipping back to my other channels trying
11:00:48 17 to -- it just sort of repeats. This is cycle repeats itself
11:00:51 18 again and again where I keep missing stuff. And, you know, I
11:00:55 19 did the best I could, and I did everything as I was supposed to
11:01:01 20 have done and everything worked out. But I just came out of
11:01:06 21 that, especially after having -- having spent some time in
11:01:08 22 Silicon Valley and being exposed to the world of software and
11:01:12 23 computing and Internet, I just thought there has to be a better
11:01:16 24 way.
11:01:16 25 Q. Okay. And we'll come back to this in a bit. How long

11:01:19 1 were you in the Army for your second enlistment?

11:01:21 2 A. I got out in the fall of 2003, two years after my
11:01:26 3 re-enlistment.

11:01:27 4 Q. And did you form Voxer immediately after you were
11:01:30 5 discharged?

11:01:31 6 A. No, I did not.

11:01:32 7 Q. What did you do first?

11:01:33 8 A. I founded a company called Triple Canopy.

11:01:35 9 Q. And what did you do there?

11:01:36 10 A. So Triple Canopy was a high-threat security firm. And,
11:01:40 11 basically, while I was in Afghanistan, I was unaware that this
11:01:45 12 industry existed, but there were a few times traveling around
11:01:48 13 the country where I would run into private security guards,
11:01:50 14 typically Blackwater or some other firm. And I -- they weren't
11:01:55 15 always the best of interactions, and I would ask my friends,
11:01:59 16 you know, I bumped into some friends, that I had known from
11:02:04 17 Special Forces previously who had gone over to the private
11:02:07 18 contracting side, and I would ask them what's going on.

11:02:11 19 And so I learned about this industry, and the sense
11:02:16 20 that I got from all my friends was that, for various reasons,
11:02:22 21 this is an important industry that needed to exist. You know,
11:02:25 22 the -- the State Department, like any -- like any other foreign
11:02:27 23 service, is not allowed to be protected by the military,
11:02:30 24 generally. This is a body of law called SOFA, Status of Forces
11:02:35 25 Agreements. And so it's every city -- every major city doesn't

11:02:38 1 become a militarized zone. Otherwise, every time the Russian
11:02:40 2 Ambassador went to New York, he would have Russian military and
11:02:42 3 the Chinese Ambassador would have Chinese military and every
11:02:46 4 city would be a military zone. And so it's prohibited by law.

11:02:53 5 And then -- but as soon as Al Qaeda sort of showed up
11:02:57 6 on the scene and started targeting airplanes and Embassies and
11:03:03 7 diplomats, the State Department realized they needed a much
11:03:06 8 more muscular private security, and so they started looking to
11:03:09 9 private firms to hire former Special Forces personnel.

11:03:12 10 Q. And so why did you form Triple Canopy?

11:03:15 11 A. Because it was clear there was a real need. The -- the --
11:03:20 12 all my friends in the community felt that something had been
11:03:22 13 lost in translation going from elite military units with a
11:03:28 14 certain cultural and ethics over in the private sector, which
11:03:32 15 was sort of the wild west. And there were all sorts of
11:03:35 16 incidents that were happening that were working very contrary
11:03:39 17 to our foreign policy interests.

11:03:40 18 Q. Now, ultimately, was Triple Canopy successful?

11:03:44 19 A. It was.

11:03:47 20 Q. What happened to Triple Canopy?

11:03:50 21 A. Well, one of the metrics by which I judge Triple Canopy
11:03:53 22 being successful is that you don't hear about the industry
11:03:56 23 anymore. It used to be you heard about this industry all the
11:03:58 24 time because of bad things that would happen. And that -- you
11:04:04 25 know, I attributed that to lack of discipline and ethics and

11:04:07 1 professionalism, and I feel like we really significantly raised
11:04:11 2 the bar in the industry and transformed the industry.

11:04:13 3 And -- and because of that, we continued to get
11:04:16 4 contracts and continued to grow. And 13 years later, it went
11:04:19 5 from me and my cofounder to over 11,000 employees and over a
11:04:23 6 billion in revenue and we sold the company.

11:04:25 7 Q. Now, did you have any communication challenges at Triple
11:04:28 8 Canopy?

11:04:29 9 A. Of course. I mean, we were -- every company always has
11:04:34 10 communications challenges, and we had some particularly
11:04:38 11 challenging ones. You know, we were trying to roll out
11:04:42 12 across -- our initial contracts, we were across twelve
11:04:45 13 different sites in Iraq in the middle of a war. And you can't
11:04:49 14 sort of call up your local cable provider and just sort of have
11:04:53 15 them set everything up for you.

11:04:55 16 And, you know, I knew that I wanted to have a modern,
11:05:02 17 high-performance, you know, communications environment for the
11:05:06 18 company, and I knew I needed to do that via satellite. And so
11:05:10 19 I knew that there was a -- there were a bunch of things we
11:05:13 20 needed to do to make that work properly.

11:05:16 21 Q. So what did you do to build out that network for yourself
11:05:19 22 in Iraq?

11:05:20 23 A. Well, the first thing I did was I -- I reached out to a
11:05:24 24 friend of mine in Silicon Valley who had worked with
11:05:27 25 Netcentives who was a brilliant networking engineer that I

11:05:29 1 knew. He was busy with his own startup, but he said I know the
11:05:33 2 perfect guy for you, and he introduced me to Matt Ranney, who
11:05:37 3 become my cofounder of Voxer.

11:05:39 4 And we talked on the phone, hit it off immediately,
11:05:42 5 hired him that day, and we got to work. The next day he flew
11:05:46 6 in and we got to work building out the network that we needed.

11:05:50 7 Q. Now, did you start any companies after starting Triple
11:05:53 8 Canopy?

11:05:54 9 A. Yes. Voxer.

11:05:55 10 Q. And why did you found Voxer?

11:05:56 11 A. So, you know, Voxer originates out of the frustration I
11:06:02 12 had with military communications. And when I started working
11:06:07 13 with Matt at Triple Canopy and we were building out, we could
11:06:11 14 buy anything we wanted in terms of communications gear. We
11:06:15 15 could buy any military radios, we could buy any, you know,
11:06:23 16 enterprise commercial, you know, equipment.

11:06:25 17 And it was clear that even though we were doing
11:06:29 18 everything to the highest standards, you know, and everything
11:06:33 19 was working, there was something missing. We were always like
11:06:36 20 there's got to be -- there are certain problems that are just
11:06:39 21 difficult, you know, trying to have a voice-over-IP call over
11:06:43 22 satellite across multiple sites in Iraq, you know, from D.C.
11:06:47 23 is -- you have challenges, you have issues. And just managing
11:06:50 24 all the complexity of the operations, it was -- it was always
11:06:55 25 a -- you know, we always just thought there must be something

11:06:58 1 more that we can build or do.

11:07:00 2 And it began a multiyear conversation between me and
11:07:04 3 Matt Ranney, just sort of brainstorming about, you know, what
11:07:07 4 are the gaps? What's missing? Why do we still -- why do we
11:07:10 5 keep solving the same problems over and over again and it's
11:07:13 6 never as good as we want it to be?

11:07:15 7 Q. And did you come to some epiphany at some point in time
11:07:19 8 about that?

11:07:20 9 A. I did. I did very much. So it's kind of funny. I was at
11:07:25 10 home in Wyoming, and I was just -- I don't know why, but I was
11:07:29 11 having a little thought experiment in my head of, if I was back
11:07:32 12 in that situation in the ambush scenario managing all those
11:07:37 13 channels and if I could wave a magic wand and have a magic
11:07:40 14 system that worked any way I wanted it to work, I thought, from
11:07:44 15 a human standpoint, how would it want it to work?

11:07:46 16 And I thought, from a human standpoint, everyone who
11:07:48 17 is trying to communicate with me I want to be able to pick. I
11:07:54 18 don't want to be interrupted. I want to be able to pick where
11:08:00 19 I'm live. And anything that is a lower priority than that, I
11:08:03 20 want to be able to, you know, time-shift whatever amount that I
11:08:07 21 want, you know, sort of like having a buffer in all of the
11:08:11 22 inbound communication. And so I could sort of deal with what's
11:08:14 23 most important and deal with what's second most important,
11:08:16 24 third most important, and work my way through.

11:08:18 25 And so I sort of visualized having a system that, in

11:08:21 1 the same way that it's so easy to sort of go on an app, like a
11:08:25 2 messaging app or something like that where, you know, you never
11:08:28 3 feel sort of overwhelmed -- I mean, sometimes if you have a ton
11:08:33 4 of messages, but even when you have a ton of messages, you can
11:08:37 5 sort of pick which conversation you want to go to first. And
11:08:40 6 you can deal with those things that are most important to you
11:08:42 7 first, and you can ignore certain things for a while, knowing
11:08:45 8 you're not going to miss them.

11:08:47 9 And I wanted that type of environment for live media,
11:08:50 10 and it only existed for messaging. It didn't exist for
11:08:53 11 anything live. So that's on the inbound side, right? I wanted
11:08:57 12 something that was more elegant and less interruptive and
11:09:00 13 intrusive.

11:09:01 14 And on the outbound side, I didn't want to ever have
11:09:03 15 to wait. I didn't want to have to deal with waiting for people
11:09:07 16 to stop speaking and call signs and repeating things back. And
11:09:13 17 I wanted to be able to, you know, speak, and if people are
11:09:16 18 listening, then they hear me live. And if for any reason they
11:09:19 19 can't hear me live, whether that's because of their own
11:09:22 20 attention, they're distracted by something else or whether
11:09:25 21 that's because of some sort of network intermittency, they'll
11:09:30 22 still get it.

11:09:31 23 Q. And what were your conclusions about what was wrong with
11:09:37 24 existing communications?

11:09:38 25 A. Well, there was -- there was nothing in the existing, you

11:09:44 1 know, world of communications that could work that way. There
11:09:48 2 were plenty of live systems. And, you know, it's -- there's --
11:09:53 3 you know, TV has been around a long time. Live streaming, as
11:09:58 4 they talked about in their opening, has been around a long,
11:10:02 5 long time. We're not claiming to have invented live streaming.

11:10:06 6 The -- what I was trying to understand was how do we
11:10:09 7 take these live things and incorporate them into sort of more
11:10:15 8 of a messaging type of an environment or framework. So, you
11:10:20 9 know, it's -- it's -- you know, I wanted to be able to have an
11:10:23 10 interactive, organized live system, a system that is live but
11:10:28 11 doesn't have to be, and -- and you can fall back on reviewing
11:10:34 12 things later and/or forwarding things, et cetera.

11:10:38 13 Q. And did you write down information about your epiphany
11:10:42 14 after you had it?

11:10:45 15 A. I did. I did.

11:10:48 16 Q. And let me show you -- this is not pre-admitted. Let me
11:10:53 17 show you Plaintiff's Exhibit 157. Mr. Katis, do you recognize
11:10:57 18 that on your screen?

11:10:59 19 A. Yes, I do.

11:11:00 20 Q. And, Mr. Katis, what do you recognize this to be?

11:11:04 21 A. This is basically after I had my sort of epiphany, you
11:11:11 22 know, if I had a magic wand, what would it look like, you know,
11:11:14 23 idea, I basically grabbed my laptop, and this is sort of stream
11:11:18 24 of consciousness, typing things out.

11:11:20 25 MR. STONE: And, Your Honor, we'd like to have

11:11:22 1 Plaintiff's Exhibit 157 introduced into evidence.

11:11:25 2 MS. ANDERSON: Your Honor, for Meta, Meta does not
11:11:28 3 object to the introduction of this particular exhibit as long
11:11:31 4 it is not being offered for its truth because, if it is, it is
11:11:33 5 hearsay statement. But if it's not being offered for its
11:11:36 6 truth, we do not object and would request an instruction to the
11:11:39 7 jury in that regard.

11:11:40 8 THE COURT: Mr. Stone?

11:11:40 9 MR. STONE: Your Honor, we believe it's a preliminary
11:11:46 10 business document relating to Voxer's work, and it's actually a
11:11:50 11 business record created by Mr. Katis.

11:11:53 12 THE COURT: Well, I'm going to admit it with this
11:11:55 13 instruction to the jury: You are not to consider it for the
11:11:58 14 truth of anything that's stated in it. The witness may be
11:12:02 15 questioned by you, Mr. Stone. It is admitted merely to show
11:12:05 16 that this is where he memorialized his thoughts after thinking
11:12:09 17 about the matters that he's just testified to.

11:12:12 18 MR. STONE: Very well.

11:12:13 19 MS. ANDERSON: Thank you, Your Honor.

11:12:16 20 Q. (BY MR. STONE) Now, Mr. Katis, when did you prepare this?

11:12:18 21 A. October 4th of 2006.

11:12:21 22 Q. And do you have a timeline prepared to show the jury?

11:12:26 23 A. Yes, I do.

11:12:28 24 MR. STONE: Can we see that, please?

11:12:29 25 Q. And is this white paper reflected on the timeline?

11:12:34 1 A. Yes, it is. It might be a little bit confusing, in that
11:12:44 2 when I first formed the business, I didn't know what to call
11:12:47 3 it. And so I called it CommoTEK. T-E-K are my initials. And
11:12:52 4 everybody hated the name, including me, and so we pretty
11:12:56 5 quickly changed it. Unfortunately, we changed it to another
11:13:00 6 name that nobody liked, which was RebelVox. And so you'll see
11:13:03 7 the names CommoTEK and RebelVox on some things. They're all
11:13:04 8 just Voxer. Those are just short-term temporary names we used
11:13:08 9 while trying to find a name we all liked.

11:13:11 10 Q. And, Mr. Katis, what did you do next in time in connection
11:13:14 11 with pursuing your ideas?

11:13:15 12 A. I reached out to Matt Ranney.

11:13:17 13 Q. And when did you do that?

11:13:19 14 A. Well, very quickly, but, you know, I really wanted to meet
11:13:25 15 with him in person. And it took us until early January of 2007
11:13:30 16 to meet in person.

11:13:31 17 Q. And what do you remember about your discussions with
11:13:33 18 Mr. Ranney at that time?

11:13:34 19 A. It was actually kind of funny, because, like, I love
11:13:37 20 technology but I am not engineer. And Matt is just an
11:13:39 21 incredible networking engineer who thinks in a way that -- my
11:13:41 22 brain is slightly different. And so you know this whole idea
11:13:42 23 sort of came from a human standpoint: What do I want my
11:13:45 24 interaction to be with the system?

11:13:46 25 And I understood some of, you know, how the existing

11:13:49 1 systems worked, but I wasn't an expert in these things. And so
11:13:59 2 I reached out to Matt, and I explained the way I wanted it to
11:14:07 3 work. And he just said, Well, it doesn't work that way. And I
11:14:16 4 said -- I said, I know. I know. But, like, you know, could
11:14:20 5 it? Could we build a system that works this way? And he kept
11:14:24 6 saying, Well, but it doesn't. And he tried to explain to me
11:14:27 7 how live systems and messaging systems, they sort of teach away
11:14:29 8 from each other.

11:14:30 9 MS. ANDERSON: Objection, Your Honor. The witness is
11:14:31 10 testifying as to hearsay. Move to strike.

11:14:33 11 THE COURT: Sustained.

11:14:34 12 MR. STONE: Very well. I'll move on.

11:14:36 13 Q. Did, ultimately, you and Mr. Ranney decide to form Voxer?
11:14:40 14 A. Yes. It was a little bit of an interesting conversation.
11:14:44 15 It was fun, but it was sort of one of those that made your
11:14:48 16 brain hurt a little bit. But after -- after a couple of hours,
11:14:53 17 I think we were both sufficiently in a place where we were,
11:14:59 18 like, let's give it a shot.

11:15:01 19 You know, if we can build a system that has these
11:15:05 20 attributes, you know, because live systems work in a certain
11:15:09 21 way. You know, as you said in your opening, you don't start
11:15:13 22 speaking on a phone call or when you key a push-to-talk button
11:15:16 23 on a radio, no media, no content is created prior to when
11:15:21 24 you -- prior to having everything set up. Like you have to
11:15:25 25 have -- the person has to pick up on the other end or the

11:15:29 1 walkie-talkie has to blare out of the speaker. And you start
11:15:33 2 speaking and it's live only, and if you miss anything, it's
11:15:36 3 gone forever.

11:15:37 4 Whereas in a messaging system, it works in a
11:15:41 5 completely different way. Nothing is set up. You can be on
11:15:44 6 your laptop or on your phone composing an e-mail. Your phone
11:15:48 7 has no idea what the e-mail -- it's not trying to look up or
11:15:51 8 set up a connection while you're typing stuff. And it's after
11:15:54 9 you've composed it and attached it, the video or picture or
11:15:58 10 whatever, when you hit "send," then it starts to figure out how
11:16:01 11 to take that totally non-live data and get it to wherever it
11:16:05 12 needs to get to.

11:16:06 13 So we were trying to build a system that had the best
11:16:09 14 attributes of both, which begs the question of where do you
11:16:11 15 start? Do you start with a live system, or do you start with a
11:16:14 16 messaging system?

11:16:15 17 Q. Now, Mr. Katis, let me show you what has been pre-admitted
11:16:18 18 Exhibits P-827 and P-828.

11:16:21 19 MR. STONE: And, Mike, if we could display those side
11:16:22 20 by side.

11:16:23 21 Q. Mr. Katis, do you recognize these photos?

11:16:25 22 A. Yes. I apologize for my posture.

11:16:27 23 Q. And what are these photos of?

11:16:29 24 A. This was early sort of white boarding and sort of, you
11:16:33 25 know, a deep dive on -- this is in my house in Jackson,

11:16:37 1 Wyoming. And we were -- you can, you know, a white board
11:16:40 2 there. You can see a bunch of big paper tear-offs. And
11:16:44 3 we're -- we're trying to do a deep dive and understanding what
11:16:47 4 is this -- what is this idea? How deep does it go? And just
11:16:52 5 trying to understand the logic behind it.

11:16:55 6 You know, you sort of have to go from logic into,
11:16:58 7 well, how would we build it. And then you -- it's after you
11:17:01 8 get those steps, and then you start talking about patents and
11:17:05 9 whatnot.

11:17:06 10 Q. And is that you in the picture on the right?

11:17:09 11 A. That is.

11:17:10 12 Q. And who is on the picture on the left?

11:17:13 13 A. Matt Ranney on the left and Jim Panttaja.

11:17:16 14 Q. And you mentioned Mr. Ranney joined Voxer. Did
11:17:18 15 Mr. Panttaja join Voxer?

11:17:19 16 A. Yes. Jim Panttaja and his wife Mary both joined Voxer.

11:17:23 17 Q. And what were their roles?

11:17:25 18 A. So I had met them both at Netcentives. They're both
11:17:27 19 talented engineers. Jim was a very good leader of engineers
11:17:31 20 and developers, good at building products. And Mary was more
11:17:35 21 of a jack-of-all-trades. She worked with me at Netcentives
11:17:41 22 typically as a sales engineer. And they both, you know, dove
11:17:45 23 in and really helped us to figure this stuff out.

11:17:50 24 Q. Now, were there any other early employees at Voxer?

11:17:52 25 A. Yes. Jim Rose.

11:17:54 1 Q. When did Mr. Rose join Voxer?

11:17:55 2 A. From the beginning. I started talking with him as I was

11:18:00 3 forming the company.

11:18:00 4 Q. And what was his role?

11:18:03 5 A. He was our in-house patent counsel.

11:18:06 6 Q. What kind of work did he do?

11:18:08 7 A. You know, he was the expert on intellectual property

11:18:12 8 production and patents, and so he advised us on sort of the

11:18:16 9 correct process to follow in terms of filing patents.

11:18:19 10 Q. And what was the process that you followed?

11:18:22 11 A. Well, it involved obviously a lot of discipline about

11:18:26 12 documenting everything, which we did rigorously. But then on

11:18:30 13 top of that, he would encourage all the time and remind us all

11:18:35 14 the time of the need for an aggressive prior art searching.

11:18:38 15 Q. And you mentioned prior art. What does that mean?

11:18:41 16 A. It just basically means searching as hard as you can to

11:18:46 17 try to find anything like what you're trying to patent. Has

11:18:51 18 anybody done anything -- have they done this before, anything

11:18:54 19 like this, what are the boundaries of what people have done

11:18:58 20 before.

11:18:58 21 Q. And what did you learn through that process?

11:19:00 22 A. That no one had done this before.

11:19:02 23 Q. And did you do anything as a result of coming to that

11:19:06 24 conclusion?

11:19:06 25 A. Yes. I mean, we set about building the business and

11:19:10 1 documenting and moving forward.

11:19:11 2 MR. STONE: If you could pull back up the timeline.

11:19:13 3 Q. And is your first provisional reflected on the timeline?

11:19:16 4 A. Yes, it is.

11:19:16 5 Q. When did you file that?

11:19:19 6 A. June 28th, 2007, the day before the iPhone came out.

11:19:23 7 Q. Now, why were you so interested in making sure that you
11:19:26 8 had patent protection?

11:19:27 9 A. So at this time, you know, in terms of mobile devices and
11:19:34 10 trying to figure out how to build a business rolling out
11:19:38 11 software to mobile devices, the -- the challenges were much
11:19:42 12 different and much more difficult than they are today.

11:19:45 13 You couldn't just put an app in the App Store. You
11:19:50 14 had to not only convince, sort of, Motorola and Nokia,
11:19:55 15 Blackberry, et cetera, of the -- that they should be interested
11:19:59 16 in loading your software on their phones, but they wouldn't do
11:20:02 17 anything unless you convinced AT&T and Verizon and T-Mobile and
11:20:08 18 everybody else. So it wasn't like we were just trying to
11:20:11 19 defend against one 800-pound gorilla. It was a whole jungle of
11:20:15 20 800-pound gorillas.

11:20:17 21 And we just thought, you know, there's no
11:20:18 22 confidentiality agreement that's going to protect us against
11:20:24 23 all these huge players. And we thought, you know, it's -- you
11:20:30 24 know, as a startup, as a new technology startup, you know, you
11:20:36 25 have two choices when you invent technology: You can keep it

11:20:39 1 as a trade secret, which many companies do -- most companies
11:20:42 2 keep things as a trade secret. Or you can file for patents.

11:20:47 3 And then, you know, there is an enormous burden
11:20:51 4 placed on you in terms of the documentation. You know, you
11:20:55 5 have to completely spell out the nature of the invention.

11:20:59 6 MS. ANDERSON: Objection, Your Honor. The witness is
11:21:00 7 testifying in an expert area.

11:21:02 8 THE COURT: I can't hear you. You'll have to speak
11:21:05 9 into the microphone.

11:21:05 10 MS. ANDERSON: The witness --

11:21:05 11 THE COURT: Wait. Speak into the microphone.

11:21:06 12 MS. ANDERSON: Oh. Thank you, Your Honor. The
11:21:08 13 witness is testifying in regard to an expert area and is
11:21:10 14 continuing into an area that lacks foundation.

11:21:13 15 THE COURT: Sustained. Have him testify as to
11:21:14 16 personal knowledge.

11:21:15 17 MR. STONE: We'll move on, Your Honor.

11:21:17 18 Q. (BY MR. STONE) Now, did there come a time after you filed
11:21:20 19 your first patent provisional that you released your first
11:21:24 20 commercial app?

11:21:25 21 A. Yes.

11:21:25 22 Q. When was that?

11:21:26 23 A. 2001. So it was -- I think it was May 2011 for the iPhone
11:21:33 24 app and --

11:21:33 25 Q. Is that reflected on the timeline that we have up there?

11:21:37 1 A. Yes, it is.

11:21:39 2 Q. And what about for Android?

11:21:40 3 A. That was in November -- beginning of November of 2011.

11:21:45 4 Q. And what happened after you released those apps in 2011?

11:21:50 5 A. It was incredible. We -- we grew unbelievably quickly.

11:21:55 6 You know, we pretty quickly achieved a growth rate of -- we

11:22:01 7 were adding over 100,000 new users a day on a sustained basis,

11:22:06 8 and the growth and engagement was wild.

11:22:09 9 Q. And let me show you --

11:22:10 10 MR. STONE: And this is not pre-admitted , so let's

11:22:13 11 just show the witness, Mike.

11:22:14 12 Q. -- what's been marked as P-832. And, Mr. Katis, do you

11:22:17 13 recognize P-832?

11:22:19 14 A. Yes, I do.

11:22:19 15 Q. And what do you recognize that to be?

11:22:22 16 A. It's a company presentation.

11:22:23 17 Q. Reflecting what, sir?

11:22:28 18 A. Reflecting sort of the success we had in the early days.

11:22:33 19 Q. And was this prepared during the ordinary course of

11:22:35 20 business at Voxer?

11:22:36 21 A. Yes, it was.

11:22:37 22 Q. At your direction?

11:22:40 23 A. Yes, it is was.

11:22:40 24 MR. STONE: Your Honor, we'd move to have

11:22:41 25 Exhibit P-832 admitted into evidence.

11:22:42 1 MS. ANDERSON: No objection, Your Honor.

11:22:43 2 THE COURT: Plaintiff's Exhibit P-832 is admitted.

11:22:46 3 MR. STONE: And, Mike, if we could turn to the second

11:22:48 4 page, P-832-2.

11:22:50 5 Q. Mr. Katis, what does this reflect?

11:22:55 6 A. You can see here we are the number one social networking

11:22:58 7 app in the Apple App Store, and we're number two overall. Some

11:23:03 8 of these -- typically, the top apps would be usually games just

11:23:14 9 for a short period of time. We were -- so we were -- in this

11:23:19 10 particular slide, we were number one in social networking and

11:23:22 11 number two overall, of all free apps.

11:23:25 12 Q. And for this period of time reflected, it was number one,

11:23:29 13 even over Facebook?

11:23:30 14 A. That's correct.

11:23:32 15 Q. Now, is this a byproduct of the Voxer app having gone

11:23:35 16 viral in late 2011?

11:23:36 17 MS. ANDERSON: Objection, Your Honor: leading.

11:23:38 18 THE COURT: Sustained.

11:23:39 19 Q. (BY MR. STONE) What does this reflect here, sir?

11:23:42 20 A. I mean, the -- the popularity of the app is because the

11:23:46 21 app went viral and grew so quickly.

11:23:49 22 MR. STONE: Mike, if we could please show the witness

11:23:51 23 Exhibit P-427. This is not pre-admitted.

11:23:57 24 Q. Mr. Katis, do you recognize Exhibit P-427?

11:23:59 25 A. Yes, I do.

11:24:00 1 Q. And what is this?

11:24:01 2 A. It's a presentation which includes a graphic from Apple.

11:24:06 3 Q. And was this a document that was prepared during the

11:24:11 4 ordinary course of business at Voxer?

11:24:13 5 A. Yes, it was.

11:24:14 6 MR. STONE: And, Your Honor, we would like to have

11:24:20 7 Exhibit P-427 admitted to evidence.

11:24:23 8 MS. ANDERSON: Objection, Your Honor: hearsay and

11:24:25 9 foundation.

11:24:25 10 THE COURT: Well, ask him some follow-up questions

11:24:28 11 and lay a better predicate for this.

11:24:30 12 MS. ANDERSON: Thank you.

11:24:31 13 Q. (BY MR. STONE) What was the purpose of preparing this

11:24:34 14 document?

11:24:34 15 A. We were trying to show the success of the Voxer app.

11:24:41 16 Q. In what context?

11:24:42 17 A. How popular it was relative to other apps in 2012.

11:24:48 18 MR. STONE: Your Honor, we think there's sufficient

11:24:50 19 foundation to lay this in as a business record from Voxer's

11:24:53 20 production.

11:24:53 21 MS. ANDERSON: Objection, Your Honor: This document

11:24:57 22 is hearsay, it is undated, there's no information about its

11:25:03 23 preparation, and it appears to be a draft as well.

11:25:09 24 THE COURT: It has not been proved as a business

11:25:10 25 record at this point, Mr. Stone, so the objection is sustained.

11:25:14 1 MS. ANDERSON: Thank you, Your Honor.

11:25:16 2 MR. STONE: We'll move on for now.

11:25:20 3 Q. At the end of 2012, were you familiar with what Voxer's

11:25:23 4 position was in the App Store?

11:25:25 5 A. Yes. We were the -- according to Apple, for all of

11:25:28 6 calendar 2012 in the U.S., we were the 13th most popular app in

11:25:34 7 the U.S.

11:25:35 8 Q. And was that information that you provided as part of

11:25:42 9 marketing materials to third parties during your tenure at

11:25:46 10 Voxer?

11:25:46 11 A. Yes.

11:25:46 12 MS. ANDERSON: Objection, Your Honor: leading.

11:25:48 13 THE COURT: Sustained.

11:25:49 14 Q. (BY MR. STONE) Did you provide that to third parties?

11:25:53 15 A. Yes.

11:25:54 16 Q. How many users did Voxer have by the end of 2012?

11:25:57 17 A. In terms of total users, including anyone that had ever

11:26:02 18 used the app, we were around 60 million. In terms of active

11:26:06 19 users, the number was around 10 million.

11:26:09 20 Q. Was there a reason why it took so long between the

11:26:13 21 founding of Voxer and the Voxer app going viral?

11:26:16 22 A. Yes. So, you know, multiple reasons. You know, first of

11:26:20 23 all, it's -- it's very difficult to launch any type of an app

11:26:24 24 that's going to go viral and be successful. If it was easy,

11:26:26 25 anyone would do it. And we worked for years trying to figure

11:26:30 1 out, you know, how to make this compelling app.

11:26:36 2 But harder than that, we actually -- we invented this

11:26:39 3 new networking -- this new type communication type, and it was

11:26:43 4 really hard to figure out how to make it work. And so the

11:26:47 5 first few years we were just trying to figure out, you know, do

11:26:51 6 we -- if it's going to be a live messaging app, you know, we

11:26:54 7 can't just use the standard things that are available, you

11:26:58 8 know, APIs on the iPhone. Do we start with sort of a live

11:27:02 9 system and figure out how to make it reliable delivery and sort

11:27:05 10 of buffer it, or do we start with a messaging system, you know,

11:27:09 11 that's asynchronous and nonprogressive. And do we figure out

11:27:14 12 how to make it progressive and live? And they both sounded

11:27:15 13 hard, and we tried both ways.

11:27:18 14 Q. What forms of communication did Voxer work with?

11:27:20 15 A. So the system is always designed to work with, you know,

11:27:25 16 sort of all existing sort of format types. So text, voice,

11:27:30 17 video, location, pictures. In the early days, we -- the server

11:27:35 18 was enabled for all of those, including video. But we didn't

11:27:41 19 enable video on the devices at that time, because in 2011 and

11:27:45 20 2012, doing sort of livestreaming video on devices was a far,

11:27:53 21 far bigger challenge than it is now, both from the standpoint

11:28:00 22 of the existing networks at the time that did not have the same

11:28:04 23 bandwidth as they do today, but also the devices themselves

11:28:07 24 just in term of the processing and rendering capabilities of

11:28:13 25 these devices. We were -- even with voice, we were asking them

11:28:18 1 to do a reasonable amount of work. And, with video, that would
11:28:21 2 go up significantly.

11:28:25 3 MR. STONE: Mike, could you pull back up Plaintiff's
11:28:27 4 Exhibit P-832.

11:28:29 5 Q. And you're familiar with the logo that Voxer used?

11:28:31 6 A. Yes.

11:28:31 7 Q. And what is it?

11:28:33 8 A. So this is our little mascot called Walkie. He's supposed
11:28:36 9 to represent, you know, a walkie-talkie.

11:28:38 10 Q. And did Voxer operate like a walkie-talkie?

11:28:42 11 A. No, it didn't. You know, with that sort of like iconic
11:28:53 12 thing, the same way that Instagram, their picture, their icon
11:28:57 13 is camera, but Instagram is not a camera. You know, we -- we
11:29:02 14 chose this as a simple, easy-to-understand icon.

11:29:05 15 And the way that people started using the app was
11:29:08 16 thinking it worked like a walkie-talkie, like a push-to-talk
11:29:15 17 walkie-talkie. But anybody that's used one knows that when you
11:29:16 18 key the mic, it blares out other people's speakers, which is
11:29:20 19 why you see police use them, you see construction workers use
11:29:24 20 them. You don't see people using them in an office
11:29:27 21 environment. No one is using one here.

11:29:30 22 And so with Voxer, instead of blaring out of somebody
11:29:35 23 else's device when you spoke, it would -- you'd just get a push
11:29:40 24 notification, and you could choose to come in and consume that
11:29:43 25 live or you could choose to consume it later.

11:29:46 1 Q. And was there anything significant about the timeline of
11:29:50 2 your inventions related to why the first Voxer app didn't have
11:29:54 3 video?

11:29:54 4 A. Yes. I mean, as I said before, it's -- the quality of the
11:29:59 5 networks at the time, the quality of the devices at the time.
11:30:04 6 This was -- this was very early days.

11:30:07 7 Q. And when you say quality of the networks, what are you
11:30:11 8 referring to?

11:30:13 9 A. You know, the bandwidth and the -- you know, the back end.
11:30:18 10 Sort of the -- you know, even as 3G started coming out, in the
11:30:23 11 same way now they talk about 5G but it's mostly 4G or 4G-plus,
11:30:26 12 back then, even when 3G was out, in most places you were really
11:30:29 13 getting 2, 2 1/2 G. And what you didn't want to do was have a
11:30:33 14 really bad user experience. Because as soon as you have
11:30:38 15 like -- as soon as somebody says, oh, this app doesn't work,
11:30:41 16 they're going to stop using it.

11:30:45 17 And so we didn't want to roll out video too soon and
11:30:48 18 have that bad, negative user experience. And that was the case
11:30:51 19 for both networks and also for the devices, particularly lower
11:30:54 20 Android devices struggled.

11:30:54 21 Q. Now, you've mentioned your provisional patent applications
11:30:54 22 a number of times. Were you one of the named inventors on
11:30:54 23 those provisions?

11:30:54 24 A. Yes I was.

11:30:54 25 Q. Now, let me show you what we've had marked as Plaintiff's

11:30:54 1 Exhibit P-5.

11:30:54 2 MR. STONE: Your Honor, this is pre-admitted.

11:30:54 3 Q. Mr. Katis, do you recognize this?

11:30:54 4 A. Yes, I do.

11:30:54 5 Q. And what is it?

11:30:54 6 A. This is our first provisional patent application.

11:30:54 7 Q. And what did you intend this to cover?

11:30:54 8 A. The scope of the idea, including, you know, live
11:30:54 9 messaging, and then multiple conversation management system.

11:30:54 10 Q. And, Mr. Katis, if you could look at page P-5-4?

11:30:54 11 MR. STONE: Mike, if you could pull that up.

11:30:54 12 Q. And what's described there, sir?

11:30:54 13 A. So you can see here we're trying to describe the nature of
11:30:54 14 the invention, and a key part here is what we're saying, you
11:30:54 15 know, to do for voice and video communications what e-mail,
11:30:54 16 instant messaging, and devices like Blackberry have done for
11:30:54 17 correspondence.

11:30:54 18 So this is, you know, we're trying to say prior to
11:30:54 19 this, you know, video is TV or, like, livestreaming something.

11:30:54 20 But, you know, we had a vision for something that was not that.

11:30:54 21 He had a vision for something that, you know, could be live but
11:30:54 22 didn't have to be and could be a two-way interactive thing.

11:30:54 23 The same way that you can, you know, on Facebook Live
11:30:54 24 you can type things back to the person who is streaming and be
11:30:54 25 interactive with that person. It's an interactive system.

11:30:54 1 It's not just TV or just livestreaming.

11:30:54 2 Q. Was there another provisional patent application?

11:30:54 3 A. Yes, there is.

11:30:54 4 Q. Let me show you what we have marked as Plaintiff's Exhibit
11:30:54 5 P-6.

11:30:54 6 MR. STONE: And, Your Honor, this is also
11:30:54 7 pre-admitted.

11:30:54 8 Q. Mr. Katis, do you recognize this?

11:30:54 9 A. Yes, I do.

11:30:54 10 Q. And what is this?

11:30:54 11 A. So this is -- we filed later in the year, in October of
11:30:54 12 2007. And we expanded the team. So it included myself and
11:30:54 13 Matt Ranney. But the two big additions were Jim and
11:30:54 14 Mary Pantaja.

11:30:54 15 Q. And what did you intend your second provisional to cover?

11:30:54 16 A. This was, you know, after having, you know, multiple
11:30:54 17 months to really, like you saw the picture of us
11:30:54 18 white-boarding, we spent months really deep diving on what
11:30:54 19 is -- what's the core of the idea. Where does -- where do all
11:30:54 20 existing technologies sort of end, and what should we -- what's
11:30:54 21 the fullest nature of this thing that we've invented and how do
11:30:54 22 we think it might be able to build it and what we should focus
11:30:54 23 on building first?

11:30:54 24 MR. STONE: And if we could turn to page P6-13.

11:30:54 25 Q. What are you describing here, sir?

11:30:54 1 A. This is a target market description. So this is just, you
11:30:54 2 know, we're looking at sort of what are the potential markets
11:30:54 3 we could go to. So, you know, there's business and enterprise,
11:30:54 4 obviously, there's the consumer market, like social networks,
11:30:54 5 you know, media broadcasting, et cetera.

11:30:54 6 A big one at the bottom is tactical. This was sort
11:30:54 7 of the original inspiration of the idea. But we knew that the
11:30:54 8 idea was much bigger than tactical. And, again, this all
11:30:54 9 started from, you know, imagining not from a technical
11:30:54 10 standpoint, but from a human standpoint, you know, how do I
11:30:54 11 want to interact? What's the outcome human interaction method?
11:30:54 12 And that was where things started.

11:30:54 13 And then I needed someone like Matt Ranney to help
11:30:54 14 figure out how do we actually build a system that can actually
11:30:54 15 support that -- that user model.

11:30:54 16 Q. And why did you include all these use cases?

11:30:54 17 A. Because the provisional patent application we wanted to
11:30:54 18 lay out the range of the things that we thought were possible
11:30:54 19 to be built with this.

11:30:54 20 Q. Now, did you do all these things?

11:30:54 21 A. No. Definitely not. I mean, the first rule of startups
11:30:54 22 is that you need to focus. You can't do everything. If you
11:30:54 23 try to do everything, you're going to fail. And so we chose
11:30:54 24 one thing. We decided to do this sort of walkie-talkie style
11:30:54 25 live interaction. But it's not a walkie-talkie. It's this

11:30:54 1 live messaging thing that we're all excited about, and this
11:30:54 2 would be the first implementation.

11:30:54 3 Q. Did you ultimately receive patents related to your live
11:30:54 4 messaging technology?

11:30:54 5 A. Yes, we did.

11:30:54 6 Q. And are you a named inventor on more than one Voxer
11:30:54 7 patent?

11:30:54 8 A. Yes, I am.

11:30:54 9 Q. How many?

11:30:54 10 A. More than 150.

11:30:54 11 Q. And are you familiar with the patents being asserted in
11:30:54 12 this case?

11:30:54 13 A. Yes, I am.

11:30:54 14 Q. And which ones are they?

11:30:54 15 A. We refer to them as '270 patent and the '557 patent.

11:30:54 16 MR. STONE: Now, let's pull up Plaintiff's
11:30:54 17 pre-admitted Exhibit Number P3.

11:30:54 18 Q. Mr. Katis, do you recognize this?

11:30:54 19 A. Yes, I do.

11:30:54 20 Q. And what is it?

11:30:54 21 A. This is a '270 patent.

11:30:54 22 Q. And are you a named inventor?

11:30:54 23 A. Yes, I am. Along with Jim and Mary Pantaja and
11:30:54 24 Matt Ranney.

11:30:54 25 Q. And did you draft the claims in this patent?

11:30:54 1 A. No, I did not. A hired counsel to do it.

11:30:54 2 Q. And what is the other patent being asserted?

11:30:54 3 A. The '557.

11:30:54 4 MR. STONE: And if we could pull up, please,

11:30:54 5 Plaintiff's Pre-admitted Exhibit P4.

11:30:54 6 Q. Mr. Katis, do you recognize this?

11:30:54 7 A. Yes, I do.

11:30:54 8 Q. And what is this?

11:30:54 9 A. This is the '557 patent.

11:30:54 10 Q. And are you a named inventor on the patent?

11:30:54 11 A. Yes, I am. Along with Jim and Mary Pantaja and

11:30:54 12 Matt Ranney.

11:30:54 13 Q. Now, Mr. Katis, did there ever come a time when you

11:30:54 14 discussed your technology and your patents with Facebook?

11:30:54 15 A. Yes. Many times.

11:30:54 16 Q. And when?

11:30:54 17 A. So the first time -- if we refer to the timeline, the

11:30:54 18 first time we met with them was early. It was -- you can see

11:30:54 19 here on August 17th of 2010.

11:30:54 20 Q. And who participated in that meeting?

11:30:54 21 A. From Voxer's side it was myself, Matt Ranney, Andy Kelly,

11:30:54 22 who is my business affairs, and Gustaf Alstromer, who was my

11:30:54 23 head of growth.

11:30:54 24 Q. And what was Mr. Alstromer role as head of growth?

11:30:54 25 A. So being head of growth, you basically -- it's a product

11:30:54 1 type function where you're looking at the way the product is
11:30:54 2 designed and trying to understand which aspects of it are
11:30:54 3 contributing to growth and engagement and which can be made to
11:30:54 4 contribute more or modified or improved.

11:30:54 5 Q. And what do you recall about that meeting?

11:30:54 6 A. So we met with Chamath Palihapitiya, who was there for
11:30:54 7 Facebook's head of growth, and Matt Papakipos, who was one of
11:30:54 8 the directors of engineering.

11:30:54 9 Q. And what did you discuss at that meeting?

11:30:54 10 A. So this was early on and not fully launched, a production
11:30:54 11 version of Voxer. We had a beta. You know, it was sort of a
11:30:54 12 working prototype. And this was based on sort of a chance
11:30:54 13 meeting of Andy Kelly. And they set it up, and it was just
11:30:54 14 sort of an introductory meeting.

11:30:54 15 And so we spoke at a fairly high level. We showed
11:30:54 16 them -- we showed them the app working, and they were
11:30:54 17 intrigued. And we talked at a high level about, well, you know
11:30:54 18 at any one of these meetings before, I would talk about our
11:30:54 19 live messaging technology, which was always exciting. But
11:30:54 20 it's -- because most companies don't go the patent route, most
11:30:54 21 companies just use trade secrets --

11:30:54 22 MS. ANDERSON: Objection, Your Honor: The witness is
11:30:54 23 testifying as to matters which lack foundation.

11:30:54 24 MR. STONE: He's testifying --

11:30:54 25 MS. ANDERSON: Other's knowledge and what most other

11:30:54 1 companies do. Move to strike that portion, Your Honor.

11:30:54 2 THE COURT: Well, he had knowledge of that. He's in
11:30:54 3 the industry. And I don't think that's of major importance
11:30:54 4 anyway. The objection is overruled.

11:30:54 5 MR. STONE: Thank you, Your Honor.

11:30:54 6 MS. ANDERSON: Thank you, Your Honor.

11:30:54 7 A. Yeah. So because we made this decision early on to go the
11:30:54 8 route of filing for patents, we knew that, you know, we would
11:30:54 9 have some protection there, and we knew that if we didn't tell
11:30:54 10 them that we had patents, then they would assume we didn't.
11:30:54 11 And we just wanted to be clear and up-front, you know, that
11:30:54 12 this is something that's been a core of the business from the
11:30:54 13 beginning.

11:30:54 14 So I'd always at every meeting disclose the patents
11:30:54 15 briefly and then move on and describe the nature of this new
11:30:54 16 networking type that we figured out, this new communication
11:30:54 17 type.

11:30:54 18 Q. Did Voxer provide a demo?

11:30:54 19 A. We did.

11:30:54 20 Q. Now, let me show you what I've marked as Plaintiff's
11:30:54 21 Exhibit -- which we've marked as Plaintiff's Exhibit P-752.

11:30:54 22 MR. STONE: Your Honor, this is pre-admitted.

11:30:54 23 THE COURT: That's fine. It's not really
11:30:54 24 pre-admitted. It's admitted.

11:30:58 25 MR. STONE: Your Honor, correct.

11:30:59 1 THE COURT: Because I admitted it.

11:31:01 2 MR. STONE: I apologize.

11:31:02 3 THE COURT: For the jury, there's no difference

11:31:03 4 between pre-admitted exhibits, the list I read to you at the

11:31:08 5 beginning and any other exhibits.

11:31:10 6 MR. STONE: Thank you, Your Honor.

11:31:11 7 Q. Mr. Katis, do you recognize Exhibit P-752?

11:39:58 8 A. Yes, I do.

11:39:58 9 Q. And what is it?

11:39:59 10 A. This is an e-mail from myself to the company. Well, the

11:40:03 11 company that became Voxer. At this point we had that

11:40:05 12 intermediate name RebelVox.

11:40:06 13 Q. And can you please read what you wrote after Point 1.

11:40:08 14 A. Sure. It said: "They love what we are doing. Regardless

11:40:15 15 of whether anything moves forward, we are on their radar.

11:40:17 16 Their VP of Growth and Mobile kept saying 'that's so cool'

11:40:19 17 throughout the whole demo. We were very clear that we were

11:40:23 18 still in beta. They commented on the clunky bits, but they

11:40:27 19 were able to look past them. The app itself worked

11:40:30 20 beautifully."

11:40:31 21 Q. Was this your takeaway from the meeting?

11:40:37 22 A. Yes, it was.

11:40:37 23 Q. When did you next meet with Facebook?

11:40:39 24 A. If we can look at the timeline?

11:40:41 25 So the next meeting with Facebook was after the

11:40:43 1 launch of our apps and after the viral success. It would have
11:40:47 2 been on December 12th.

11:40:48 3 Q. And who -- what were the circumstances that led to that
11:40:51 4 meeting?

11:40:51 5 A. Facebook reached out to us to ask for a meeting.

11:40:54 6 Q. And let me show you what we'll have marked -- what has
11:41:01 7 been admitted as Plaintiff's Exhibit 743.

11:41:04 8 Mr. Katis, do you recognize this?

11:41:06 9 A. Yes, I do.

11:41:07 10 Q. And what is this?

11:41:08 11 A. This is an e-mail from myself to Matt Ranney, my
11:41:11 12 cofounder.

11:41:14 13 Q. And what are you describing here?

11:41:15 14 A. Just basically letting him know that I'm getting a lot of
11:41:20 15 inbound interest, both from big tech companies like Facebook
11:41:26 16 and Google, but also from the top VCs, venture capital firms.

11:41:30 17 Q. And what does top VCs refer to?

11:41:33 18 A. So in Silicon Valley the primary means of funding
11:41:37 19 businesses is venture capitalists. They will make an equity
11:41:41 20 investment in your firm. And at the time we were looking to
11:41:45 21 raise some money.

11:41:46 22 Q. How much money were you looking to raise?

11:41:49 23 A. Around 20 million.

11:41:50 24 Q. And was that 20 million based on some valuation for Voxer?

11:41:54 25 A. Yeah. It would have resulted in a valuation of around

11:41:56 1 \$200 million.

11:41:57 2 Q. And did you ultimately receive that funding?

11:42:01 3 A. Yes, we did.

11:42:01 4 Q. And when was that?

11:42:02 5 A. We completed the round, all the paperwork and everything,

11:42:06 6 and were funded in April of 2012.

11:42:09 7 Q. Now, did the meeting with Facebook in December of 2011 go

11:42:13 8 forward?

11:42:15 9 A. Yes, it did.

11:42:16 10 Q. Now let me show you what has been admitted as Plaintiff's

11:42:19 11 Exhibit 744.

11:42:20 12 Mr. Katis, do you recognize this?

11:42:21 13 A. Yes, I do.

11:42:24 14 Q. And what was this?

11:42:25 15 A. This is another e-mail from myself to the whole company at

11:42:29 16 Voxer.

11:42:29 17 Q. And what were you describing here?

11:42:31 18 A. I was just trying to keep everybody in the loop. I

11:42:35 19 describe, you know, that I had gone down and had a meeting at

11:42:38 20 Facebook that day and met with a relatively junior person in

11:42:45 21 the corp dev team.

11:42:46 22 Q. And you say with corp dev. What was the corp dev team?

11:42:48 23 A. So corporate development is typically the function within

11:42:52 24 tech companies that looks at either raising money or acquiring

11:42:56 25 other companies.

11:42:56 1 Q. And do you know who was leading the corp dev team at
11:42:59 2 Facebook in 2011?

11:43:02 3 A. Yes. Amin Zoufonoun.

11:43:03 4 Q. Did you ultimately meet with Mr. Zoufonoun?

11:43:06 5 A. I did.

11:43:07 6 Q. Going back to the December meeting, what did you discuss
11:43:12 7 at that meeting?

11:43:13 8 A. It was an early sort get-to-know-you thing. It was a
11:43:16 9 relatively junior person. And, you know, everyone typically
11:43:19 10 would, you know, ask about, you know, our viral growth. They
11:43:23 11 would frequently ask about, you know, they'd heard we were
11:43:26 12 raising money. And, you know, at some point I'd come around
11:43:29 13 and talk about what was core to the business, and I would
11:43:33 14 discuss or patents and our technology.

11:43:35 15 Q. Did Facebook follow up with you after this meeting?

11:43:39 16 A. Yes, they did.

11:43:40 17 Q. And what did they do?

11:43:42 18 A. If we can look at the timeline?

11:43:47 19 So on February 2nd of 2012, Peter Deng reached out to
11:43:51 20 me and requested a meeting.

11:43:53 21 Q. Let me show you what's been admitted as Plaintiff's
11:43:56 22 Exhibit 741.

11:43:58 23 Mr. Katis, what is Plaintiff's Exhibit 741?

11:44:00 24 MS. ANDERSON: Objection, Your Honor. I don't
11:44:01 25 believe 741 is on our list.

11:44:08 1 MR. STONE: I apologize.

11:44:09 2 MS. ANDERSON: Thank you.

11:44:09 3 Q. (BY MR. STONE) Mr. Katis, do you recognize what has been

11:44:12 4 marked as Plaintiff's Exhibit 741?

11:44:14 5 A. Yes, I do.

11:44:14 6 Q. And what is this?

11:44:16 7 A. This was simply sort of an introductory e-mail from

11:44:20 8 Peter Deng to me asking for a meeting.

11:44:27 9 MR. STONE: And, Your Honor, this e-mail chain

11:44:29 10 contains admissions from Facebook as well as a business record

11:44:38 11 and present-sense impressions from Voxer, and we believe it

11:44:42 12 should be admitted into evidence.

11:44:43 13 MS. ANDERSON: Your Honor, with respect to

11:44:49 14 Exhibit 741, as we have informed Voxer, we do not object to the

11:44:54 15 initial e-mail, which is the first one in the string. But the

11:44:58 16 top e-mail in this exhibit is hearsay.

11:45:01 17 THE COURT: Who is Gustaf Alstromer?

11:45:05 18 THE WITNESS: He was our head of growth.

11:45:06 19 MR. STONE: He's an employee at Voxer, working at

11:45:09 20 Mr. Katis's direction.

11:45:10 21 THE COURT: All right. I do not find what their

11:45:12 22 internal talking to be relevant to setting up the meetings and

11:45:16 23 what have you with Facebook, so I will admit the exhibit except

11:45:20 24 for the e-mail from Gustaf Alstromer to Mr. Katis, which I do

11:45:31 25 not admit.

11:45:32 1 So if you want to talk to him about this and then
11:45:40 2 prepare a redacted version to show the jury at some point,
11:45:49 3 we're going to be breaking for lunch in 15 minutes, so you can
11:45:59 4 do something with that.

11:46:00 5 It's admitted except for the February 3rd, 2012
11:46:06 6 e-mail.

11:46:07 7 MR. STONE: And, Your Honor, we really want to focus
11:46:09 8 on the Facebook admissions here anyway, so I can just show that
11:46:11 9 portion on the screen.

11:46:12 10 THE COURT: As long as you just show that portion on
11:46:15 11 the screen, that's fine.

11:46:16 12 MR. STONE: Great. That's what we'll do, Your Honor.

11:46:18 13 MS. ANDERSON: Thank you, Your Honor.

11:46:18 14 Q. (BY MR. STONE) So, Mr. Katis, what was this e-mail?

11:46:21 15 A. This is an e-mail from Peter Deng at Facebook to myself,
11:46:28 16 and he was -- he wanted to arrange a meeting.

11:46:30 17 Q. And who was Peter Deng?

11:46:32 18 A. Peter Deng was one of the people leading the Facebook
11:46:35 19 Messenger group.

11:46:36 20 Q. Do you know what his title was?

11:46:39 21 A. I believe his title was director of product.

11:46:55 22 Q. And what was Facebook Messenger?

11:46:57 23 A. Facebook Messenger was a messaging app, not unlike Voxer.
11:47:01 24 We were both messaging apps. But Facebook Messenger didn't
11:47:07 25 have any type of voice component to it. It was texts,

11:47:10 1 pictures, you can attach videos. And it was relatively early
11:47:15 2 in its development.

11:47:17 3 Q. And did you understand what Mr. Deng's role was in
11:47:21 4 connection with your interactions with Facebook?

11:47:23 5 A. Peter Deng ended up sort of being a point person for a lot
11:47:29 6 of our interactions. He was sort of from this point going
11:47:33 7 forward basically our point for arranging all the meetings.

11:47:39 8 Q. Now, there's also a reference to Ben in the e-mail and in
11:47:42 9 the CC line. Do you see that?

11:47:46 10 A. Yes.

11:47:46 11 Q. And who is Mr. Davenport?

11:47:47 12 A. Ben Davenport had started a company called Beluga, which
11:47:50 13 was a small messaging app, and Facebook had acquired them and
11:47:54 14 made them the core of their Messenger team.

11:47:56 15 Q. Did you subsequently meet with Mr. Deng and Mr. Davenport?

11:47:59 16 A. Yes, I did.

11:48:00 17 Q. And when did you do that?

11:48:02 18 A. If we can look at the timeline?

11:48:05 19 So you can see here on February 8th I met with
11:48:12 20 Peter Deng and Ben Davenport, as well as Mike Schroepfer?

11:48:15 21 Q. And where did that meeting take place?

11:48:17 22 A. At Facebook's headquarters.

11:48:19 23 Q. And what did you discuss at that meeting?

11:48:22 24 A. So it was -- it was clear that they had spent a lot of
11:48:30 25 time on Voxer. They were super intrigued by it. It was also

11:48:36 1 clear that, initially, they had viewed really as sort of a
11:48:41 2 walkie-talkie voice -- like, live voice. And they -- they got
11:48:44 3 that it wasn't quite a walkie-talkie, that we were doing
11:48:48 4 something different, but they didn't fully understand it.

11:48:50 5 And so, you know, as I always did, you know, I would
11:48:54 6 mention, you know -- you know, this new technology in the
11:48:59 7 context that we had from the beginning sought to patent it.
11:49:04 8 And we felt that there was this -- we had just sort of cracked
11:49:09 9 open the whole new area of communications technologies.

11:49:13 10 MS. ANDERSON: Objection, Your Honor: The witness is
11:49:14 11 testifying as to hearsay, as to what Voxer has said to
11:49:17 12 Facebook.

11:49:18 13 THE COURT: Sustained.

11:49:19 14 MS. ANDERSON: Thank you, Your Honor.

11:49:20 15 Q. (BY MR. STONE) Mr. Katis, did you meet with anyone else in
11:49:22 16 connection with these meetings?

11:49:24 17 A. Yes. I met briefly with Mike Schroepfer.

11:49:27 18 Q. And who was that?

11:49:28 19 A. Mike Schroepfer was the director of engineering. He
11:49:32 20 was -- my understanding is that he was basically the number two
11:49:37 21 engineer at Facebook.

11:49:38 22 Q. Did Facebook ask you anything else during these meetings?

11:49:41 23 A. They asked us a lot of questions, including that they were
11:49:46 24 curious about our current capital raise. They knew that we
11:49:50 25 were out talking to venture capitalists, and they were

11:49:52 1 interested in that.

11:49:53 2 Q. And what did you understand the next steps to be with
11:49:56 3 Facebook?

11:49:56 4 A. They said that they would get together and discuss it and
11:49:59 5 get back to me.

11:50:01 6 Q. And did they?

11:50:02 7 A. Yes, they did.

11:50:03 8 Q. And did they ask for another meeting?

11:50:05 9 A. Yes, they did.

11:50:07 10 Q. And where did that meeting take place?

11:50:09 11 A. At Voxer -- excuse me. At Facebook headquarters on
11:50:12 12 February 16th.

11:50:13 13 Q. And when did that meeting take place?

11:50:15 14 A. February 16th.

11:50:16 15 MR. STONE: Your Honor, let me show the witness
11:50:18 16 what's been marked as Exhibit P-739. It's not been
11:50:21 17 pre-admitted.

11:50:22 18 Q. Mr. Katis, do you recognize this?

11:50:24 19 A. Yes, I do.

11:50:25 20 Q. And what is it?

11:50:27 21 A. This is an e-mail from Gustaf to myself. We were the two
11:50:31 22 who went to Facebook's headquarters for the meeting.

11:50:36 23 Q. And when was it prepared?

11:50:39 24 A. This was -- like immediately after the meeting. He sent
11:50:46 25 it to myself and the senior management team. I had asked him

11:50:50 1 to prepare a summary for us of the meeting.

11:50:56 2 Q. And is this is summary that Mr. Alstromer prepared at your
11:50:59 3 direction following the meeting?

11:51:01 4 A. Yes.

11:51:01 5 MR. STONE: And, Your Honor, we'd like to have
11:51:05 6 Exhibit P-739 admitted into evidence.

11:51:10 7 MS. ANDERSON: Objection, Your Honor: The e-mail is
11:51:11 8 hearsay and contains hearsay within hearsay as well. It also
11:51:14 9 has some statements in it which contain speculation and lack of
11:51:19 10 foundation.

11:51:19 11 THE COURT: I agree. I'm going to sustain the
11:51:22 12 objection, but I will allow you to question this witness about
11:51:30 13 his personal knowledge of what went on in the meeting and what
11:51:35 14 actions he took.

11:51:36 15 Q. (BY MR. STONE) And, Mr. Katis, can you tell me what you
11:51:38 16 recall about that meeting?

11:51:40 17 A. Yes, absolutely. So I met with Peter Deng. He took me in
11:51:48 18 to meet with Amin Zoufonoun. So Amin Zoufonoun was Facebook's
11:51:51 19 head of corporate development. So that sort of set the tone
11:51:57 20 for the day. The only reason -- you know, I had already
11:52:00 21 described the function to corporate development, and so we knew
11:52:03 22 that Facebook was considering, you know, a strategic move with
11:52:07 23 us.

11:52:08 24 I had a nice introductory meeting with Amin. He
11:52:13 25 typically asked questions that had more to do with the fact

11:52:15 1 that we were out trying to raise money and more corporate
11:52:19 2 things. And then Peter Deng and Amin Zoufonoun took me to go
11:52:23 3 mote with Mike Schroepfer. But on the way we were passing
11:52:27 4 Mark Zuckerberg's desk and he was there, so they introduced us.

11:52:33 5 Q. And what did you discuss with Mr. Zuckerberg?

11:52:36 6 A. We only had about five minutes with Mark Zuckerberg. And,
11:52:40 7 you know, we were, you know, thrilled to meet him. And, you
11:52:45 8 know, he -- he knew all about us. He told us he had been using
11:52:51 9 it with his girlfriend, using Voxer with his girlfriend. And
11:52:54 10 he asked me a question about engagement. And Gustaf had just
11:52:59 11 given me an interesting stat that morning and I remembered, so
11:53:04 12 I -- I told him that and he seemed to be impressed.

11:53:10 13 I knew that we only had a short time, and so I sort
11:53:13 14 of made my pitches to what live messaging is. You know, the --
11:53:18 15 everybody knew that we were this viral success, you know,
11:53:23 16 walkie-talkie app, et cetera. What I really wanted to make
11:53:26 17 sure to get across to someone like Mark Zuckerberg was that we
11:53:29 18 felt that we had invented a new communication --

11:53:34 19 MS. ANDERSON: Objection: hearsay statements by Voxer
11:53:37 20 to Facebook during these discussions.

11:53:39 21 MR. STONE: He's saying what he said, Your Honor.

11:53:42 22 THE COURT: It's just what he said.

11:53:43 23 MR. STONE: Yes.

11:53:44 24 THE COURT: So it's overruled.

11:53:46 25 MS. ANDERSON: Thank you, Your Honor.

11:53:47 1 MR. STONE: Thank you, Your Honor.

11:53:47 2 A. So I told him briefly -- of course, I prefaced it with,
11:53:53 3 you know, that we have patents, intellectual property
11:53:57 4 protection, and the core of the company since its founding, and
11:54:00 5 that we feel very proud of this live messaging technology that
11:54:05 6 we've invented that's not just live or just a message, it's
11:54:07 7 this thing in between. And, you know, I told him that, you
11:54:11 8 know, the current Voxer app, you know, employs it, but there
11:54:14 9 are many use cases and we'd love to discuss them with him.

11:54:20 10 Q. Why did you mention your patents in this brief
11:54:24 11 conversation?

11:54:24 12 A. I did it pretty much -- it was sort of, you know, just
11:54:28 13 practice with every single conversation I had with anybody
11:54:30 14 about the technology. I always start with that.

11:54:33 15 Q. And who else did you meet with during this series of
11:54:36 16 meetings?

11:54:36 17 A. From there we went to Mike Schroepfer. He was, again,
11:54:40 18 director of engineering. Our understanding was he was the
11:54:45 19 number two engineer at Facebook.

11:54:47 20 Q. And what did you discuss with him?

11:54:50 21 A. He -- he had a few questions, but then he pretty quickly
11:54:54 22 got down to, you know, would we be interested in selling to
11:54:58 23 Facebook?

11:54:59 24 Q. And what did you say?

11:55:00 25 A. So it's -- it's, you know, a weighty moment when you have

11:55:03 1 a new business that's growing quickly and Facebook asks you
11:55:06 2 that question. And, you know, it's certainly -- there
11:55:10 3 certainly could have been a number, but my -- I was so bold as
11:55:15 4 to suggest -- I didn't -- I never said we won't sell. I just
11:55:20 5 said, How about -- What if we sold you the consumer business --
11:55:24 6 instead of selling you the whole company, what if we sell you
11:55:27 7 the consumer business, and you guys do consumer. You know,
11:55:34 8 I'll license you the technology.

11:55:36 9 But Voxer, like, we really want to do tactical,
11:55:40 10 police, military, we want to enterprises. We want to do all
11:55:44 11 these other use cases, and Facebook has no interest in these
11:55:47 12 other markets. So I proposed that we would sell the Voxer
11:55:51 13 consumer network and license the technology. And that way what
11:55:57 14 was left of Voxer, we would pursue these other markets that
11:55:59 15 Facebook was not interested in.

11:56:00 16 Q. And what was Mr. Schroepfer's reaction to that?

11:56:03 17 A. He was intrigued by it.

11:56:05 18 Q. And what were the next steps with Facebook after this
11:56:07 19 meeting?

11:56:07 20 A. He wanted to -- he wanted us to have a follow-up meeting
11:56:14 21 to discuss licensing, and he asked that we bring my CTO, my
11:56:19 22 cofounder, Matt Ranney, because in this meeting it was myself
11:56:23 23 and Gustaf. So neither of us was an engineer.

11:56:25 24 Q. And so did Facebook follow up after this meeting?

11:56:29 25 A. Yes, they did.

11:56:31 1 Q. Now, let me show you what's been marked as Exhibit P-737.

11:56:34 2 And this is admitted.

11:56:37 3 Mr. Katis, do you recognize this?

11:56:38 4 A. One moment. Yes, I do.

11:56:40 5 Q. And what is this?

11:56:41 6 A. So this is Chris Daniels reaching out. So Amin Zoufonoun,

11:56:47 7 who was head of corporate development for Facebook, introduced

11:56:50 8 Chris Daniels, who is Facebook's head of business development

11:56:54 9 to me, to set up a meeting.

11:56:56 10 Q. And did he set up such a meeting?

11:57:03 11 A. Yes, he did.

11:57:04 12 MR. STONE: And, Your Honor, this might be a good
11:57:05 13 time for us to break before we get into that.

11:57:12 14 THE COURT: Ladies and gentlemen, I agree. This is a
11:57:15 15 good time to take our noon recess. We'll be in recess today
11:57:19 16 until 1:30.

11:57:20 17 Remember the instructions the court has previously
11:57:23 18 given you: Do not talk about this case among yourselves or
11:57:26 19 with anyone else. Do not read any newspaper or magazines or
11:57:31 20 any periodicals that may have information about this case. Do
11:57:33 21 not listen to any radio or observe any television broadcasts
11:57:37 22 that may have information about this case. Do not attempt to
11:57:39 23 find out anything about this case or any of the issues in it
11:57:44 24 through the use of any electronic device, and do not transmit
11:57:50 25 any information about this case to anyone by my electronic

11:57:53 1 device.

11:57:54 2 Please be back in your jury room a little before

11:57:56 3 1:30.

11:57:58 4 (Jury recessed)

11:57:58 5 THE COURT: We'll be in recess until 1:30.

18:00:00 6 (Recess)

11:58:10 7 (Open court, no jury)

11:58:10 8 THE COURT: Good afternoon, ladies and gentlemen. We
11:58:12 9 ready to proceed?

11:58:13 10 MR. STONE: Yes, Your Honor.

11:58:15 11 MS. ANDERSON: Yes, Your Honor.

11:58:48 12 THE COURT: All right. You may bring in the jury.

11:58:53 13 (Open court, jury present)

11:58:54 14 THE COURT: Mr. Stone, you may continue your direct
11:59:06 15 examination of Mr. Katis.

12:59:50 16 MR. STONE: Thank you, Your Honor.

12:59:51 17 Q. And to reorient ourselves after our lunch break, if you
13:08:47 18 could look at the timeline, Mr. Katis?

13:30:39 19 A. Yes.

13:30:39 20 Q. And I think before lunch you were about to discuss or were
13:30:43 21 discussing some interactions that you had with
13:31:15 22 Mr. Chris Daniels; is that right?

13:31:16 23 A. That's correct.

13:31:17 24 Q. And who was Chris Daniels?

13:31:20 25 A. So Chris Daniels was introduced to me as the head of

13:31:26 1 business development. So as opposed to Amin Zoufonoun, who was
13:31:29 2 head of corporate development, corporate development typically
13:31:32 3 is, like, raising money and acquiring companies, business
13:31:34 4 development is typically more like business deals, licensing,
13:31:38 5 and things like that.

13:31:40 6 And so in the conversation with Mike Schroepfer, the
13:31:43 7 director of engineering, he was intrigued by this concept of --
13:31:49 8 of selling just the consumer part, not the whole company, and
13:31:52 9 potentially licensing the technology. And so because there
13:31:55 10 would be a significant licensing component, he wanted to get
13:31:58 11 Chris Daniels involved.

13:32:00 12 Q. And so did you have an understanding you would be
13:32:05 13 discussing licensing with Mr. Daniels?

13:32:07 14 A. Yes. That was explicit, and he also asked to bring
13:32:12 15 Matt Ranney, my CTO.

13:32:13 16 Q. And Matt Ranney was going to discuss what aspects?

13:32:16 17 A. Well, we were going to a deeper dive on the technology.

13:32:19 18 Q. And were you excited about this meeting?

13:32:22 19 A. I was very excited.

13:32:23 20 Q. And why was that?

13:32:24 21 A. I mean, you know, Facebook is an incredible company that
13:32:28 22 has, you know -- you know, a lot of amazing people who work
13:32:32 23 there and incredible scale. And the prospect of this
13:32:34 24 technology that we developed being put to use, you know, by
13:32:38 25 them was exciting. And then it would also free us to focus on

13:32:41 1 enterprise and -- and tactical and other systems.

13:32:46 2 Q. And did you meet with Mr. Daniels?

13:32:47 3 A. Yes, I did.

13:32:48 4 Q. And when did you do that?

13:32:51 5 A. So if you look at the timeline, you'll see that we met on
13:32:55 6 March 6th of 2012.

13:32:56 7 Q. And what was discussed at that meeting?

13:32:59 8 A. So that meeting, all the meetings sort of increased in
13:33:04 9 enthusiasm and the numbers of people every meeting. We met
13:33:07 10 with more and more people. This meeting was no exception. So
13:33:10 11 in addition to Peter Deng, who seemed to sort of come to all
13:33:13 12 the meetings, Chris Daniels sort of took the lead in organizing
13:33:17 13 this one.

13:33:18 14 But there were a lot of -- we were kind of surprised
13:33:24 15 how many engineers and product people that were in -- it was a
13:33:26 16 large conference room and a lot of people in attendance.

13:33:29 17 Q. And when you say product people, what are you referring
13:33:33 18 to?

13:33:33 19 A. So I think engineers is somewhat self-explanatory in terms
13:33:38 20 of they're the people that write the code and do the hard-core
13:33:40 21 engineering in the system. Product people are people more who
13:33:43 22 design the user interaction, user interfaces, how does the
13:33:46 23 product work, how do you -- how do you -- how does it act from
13:33:49 24 a human standpoint, how does sort of the human interaction
13:33:54 25 interact with the technology.

13:33:55 1 Q. And do you recall specific questions that were asked of
13:33:58 2 you at the meeting?

13:34:00 3 A. Yes. You know, it started off, you know, sort of the way
13:34:04 4 that pretty much, you know, every meeting has ever started off
13:34:07 5 with us, which is, you know, I was very proud of, you know, our
13:34:11 6 patents and would always lead with that. And that -- and that,
13:34:14 7 you know, just for the new people that I hadn't met with yet,
13:34:18 8 bringing them up to speed that Voxer, the app we created, the
13:34:21 9 walkie-talkie app, was just the first product for us. And what
13:34:24 10 we were -- we were really excited about was this live messaging
13:34:27 11 technology and concept that was in between synchronous and
13:34:31 12 asynchronous communications. It was sort of that hybrid
13:34:34 13 system.

13:34:35 14 And the engineers spent quite a bit of time asking
13:34:37 15 Matt Ranney questions, and he did a lot of white-boarding.
13:34:40 16 This is the type of thing that, you know, having patents gives
13:34:44 17 you much more confidence in a situation like this because, you
13:34:51 18 know -- you know, confidentiality agreements aren't always the
13:34:58 19 best enforcement tools in Silicon Valley. And so going in with
13:35:01 20 patents, we had much higher degree of confidence. And -- and,
13:35:06 21 of course, you know, we wanted to -- we wanted to do a deal.
13:35:09 22 We wanted to, you know, acquire Facebook as a customer and
13:35:14 23 partner.
13:35:14 24 Q. Did you discuss any use cases for live messaging at the
13:35:19 25 meeting?

13:35:20 1 A. Very much. And, in fact, the bulk of the questions that
13:35:23 2 were asked by the product people were about video.

13:35:27 3 Q. And what did you say about that?

13:35:28 4 A. Well, I had done an enormous amount of thinking for years
13:35:32 5 about all these different use cases, and so I spent quite a bit
13:35:35 6 of time talking them through potential use cases for live
13:35:38 7 messaging video in a social media context.

13:35:41 8 Q. Do you recall how the meeting ended?

13:35:43 9 A. Yes. There was a lot of enthusiasm, and I felt great
13:35:48 10 about it. And it took a little while for people to file out
13:35:51 11 over the conference room. And I pulled Chris Daniels aside,
13:35:54 12 and I just asked him, How do you think it went? You know, how
13:35:59 13 is it going?

13:36:00 14 And he said he thought it went great, and then he
13:36:04 15 said we're just -- we're just trying to decide if you guys are
13:36:11 16 a competitor and if this is a core technology.

13:36:13 17 Q. And what was your reaction to that?

13:36:15 18 A. I got very nervous.

13:36:17 19 Q. Why were your nervous?

13:36:18 20 A. I mean, we sort of know what a competitor is, and I was --
13:36:23 21 you know, clearly, we -- you know, Facebook had a messenger app
13:36:26 22 and Voxer was a messaging app. The conversation we were having
13:36:28 23 was about can we sell the consumer network and do licensing and
13:36:32 24 stop being competitors and you guys can do consumer and we'll
13:36:36 25 do enterprise, tactical et cetera. So I thought we'd sort of

13:36:38 1 tackled that component of it.

13:36:40 2 But when he mentioned that they were discussing
13:36:41 3 whether this was a core technology, it scared me because, you
13:36:47 4 know, sort of in the -- in Silicon Valley that term is a very
13:36:52 5 specific term, which, basically, a tech company, you can
13:36:54 6 license and use stuff from other tech companies, but not -- not
13:37:00 7 if you consider it a core technology. If something is core to
13:37:03 8 your business, you can't license it from anybody else because,
13:37:06 9 if you do, then that company gets acquired by a competitor or
13:37:12 10 something like that happens, then you can get screwed.

13:37:16 11 MS. ANDERSON: Objection, Your Honor: move to strike
13:37:18 12 the last portion as expert opinion testimony and lacks
13:37:20 13 foundation.

13:37:21 14 THE COURT: Sustained.

13:37:22 15 MR. STONE: Your Honor. I would say he's testifying
13:37:24 16 about his understanding.

13:37:25 17 THE COURT: The jury -- the jury will accept the last
13:37:27 18 statement by the witness as only his understanding of how
13:37:29 19 things work, not as proof of how things work in Silicon Valley.

13:37:33 20 MS. ANDERSON: Thank you, Your Honor.

13:37:35 21 Q. (BY MR. STONE) Now, Mr. Katis, how did you leave it at the
13:37:37 22 end of the meeting?

13:37:38 23 A. He said that he would huddle up with the team and get back
13:37:42 24 to me.

13:37:43 25 Q. Now, did anyone at Facebook ever tell you that they were

13:37:47 1 looking into building a version of Voxer for themselves?

13:37:53 2 A. No. They did not.

13:37:53 3 MS. ANDERSON: Objection, Your Honor: leading.

13:37:53 4 Q. (BY MR. STONE) Mr. Katis, when was your next communication
13:37:56 5 with Facebook?

13:37:56 6 A. As you can see from the timeline, on March 22nd of 2012,
13:38:02 7 Chris Daniels e-mailed me to tell me that they weren't
13:38:04 8 interested.

13:38:05 9 MR. STONE: And, Your Honor, this is an exhibit
13:38:06 10 that's not yet admitted. I just want to show it to the
13:38:09 11 witness. It's been marked P-736.

13:38:13 12 Q. And if we could break it down, Mr. Katis, if you could
13:38:17 13 look at the e-mail at the bottom of P-736. Do you recognize
13:38:22 14 that?

13:38:23 15 A. Yes, I do.

13:38:23 16 Q. And what is that?

13:38:26 17 A. That's an e-mail from Chris Daniels at Facebook to myself.

13:38:30 18 Q. Dated? What's the date?

13:38:31 19 A. March 22nd, 2012.

13:38:37 20 Q. And what did you do with that e-mail?

13:38:39 21 A. I mean, I -- I read it, I shared it with the team, and I
13:38:44 22 responded to him.

13:38:45 23 MR. STONE: Okay. And, Your Honor, we'd like to have
13:38:47 24 Exhibit P-736 admitted into evidence. It contains Facebook
13:38:53 25 admissions. And the top e-mail we're not going to introduce

13:38:56 1 for the proof -- the truth of the matter asserted.

13:39:02 2 MS. ANDERSON: Objection, Your Honor: Exhibit P-736
13:39:04 3 we don't have any objection to the original e-mail in the
13:39:07 4 string. But the top two e-mails are hearsay, and we're aware
13:39:10 5 of no applicable exception.

13:39:12 6 MR. STONE: It's reflected in the impression of the
13:39:15 7 people at the company when they received this message from
13:39:17 8 Mr. Daniels. We're not offering it for the truth of the
13:39:21 9 matter.

13:39:22 10 THE COURT: Well, I'm looking at the exhibit, and the
13:39:25 11 first e-mail I see at the top is from Mr. Alstromer to
13:39:28 12 Mr. Katis.

13:39:29 13 MR. STONE: Yes.

13:39:29 14 THE COURT: Okay. And then the second one, I'm going
13:39:32 15 to sustain the objection as to all of the e-mails that occur
13:39:37 16 above the March 22nd, 2012 e-mail from Mr. Daniels to
13:39:40 17 Mr. Katis.

13:39:41 18 MR. STONE: Thank you, Your Honor.

13:39:42 19 MS. ANDERSON: Thank you, Your Honor.

13:39:43 20 THE COURT: And, you know, you-all are very nice, but
13:39:47 21 you don't have to thank me for my rulings. The taxpayers of
13:39:59 22 this country pay me to sit up here and make them.

13:40:08 23 MR. STONE: We appreciate that.

13:40:12 24 Q. So now, Mr. Katis, if you'd look at the e-mail that
13:40:15 25 Mr. Daniels sent you.

13:40:17 1 A. Yes.

13:40:18 2 Q. And so what did Mr. Daniels tell you?

13:40:20 3 A. He basically said that they weren't interested at this

13:40:24 4 time. He said that, basically, they were working through their

13:40:25 5 product priorities and the team decided it isn't in the right

13:40:30 6 time integrating Voxer into the Messaging app.

13:40:33 7 Q. And what was your reaction to this?

13:40:36 8 A. You know, I knew that there were a couple of different

13:40:42 9 things going on. One thing going on was that they were just

13:40:45 10 trying to figure out how to incorporate voice, like voice

13:40:49 11 messaging, into the Messenger app. But I also know that we had

13:40:51 12 generated a lot of enthusiasm around this live messaging

13:40:56 13 technology. And when he said they were trying to decide if

13:40:58 14 this is core, you know, that scared me. And it's hard to go

13:41:01 15 from, like, trying to decide what's core to it's not a priority

13:41:05 16 at all. So I just -- I was concerned. I thought -- I thought

13:41:09 17 they were moving forward, and I was sad they weren't going to

13:41:15 18 be a part of it.

13:41:15 19 Q. And did you have an understanding as to the reaction of

13:41:22 20 your colleagues about this?

13:41:23 21 MS. ANDERSON: Objection: lacks foundation; calls for

13:41:26 22 speculation.

13:41:26 23 THE COURT: He can answer it yes or no.

13:41:29 24 A. Yes.

13:41:29 25 Q. And what was that understanding?

13:41:31 1 MS. ANDERSON: Same objections, Your Honor.

13:41:32 2 THE COURT: Sustained.

13:41:33 3 Q. (BY MR. STONE) Mr. Katis, as of March of 2012, did Voxer
13:41:37 4 allow for live voice messaging?

13:41:38 5 A. Yes, it did.

13:41:39 6 Q. And did Facebook?

13:41:40 7 A. No, it did not.

13:41:41 8 Q. Now, after this communication in March of 2012, did there
13:41:46 9 come a time when you learned or that you were learning some
13:41:49 10 information about Facebook that made you think about your
13:41:55 11 discussion with Mr. Daniels?

13:41:57 12 A. Yes, there was.

13:41:58 13 Q. And when was that?

13:42:01 14 A. If we can put up the timeline, please.

13:42:09 15 So in August of 2015, when Facebook first launched
13:42:12 16 their first instance of Facebook Live, my gut impression was
13:42:14 17 you know, there it is. That's sort of the -- it was the --
13:42:20 18 that was what I was sort of afraid of. You know, here's this
13:42:24 19 product that Facebook just launched that looks and acts a lot
13:42:34 20 like Voxer's live messaging technology with video, which we all
13:42:40 21 discussed with them. And here was their launch.

13:42:48 22 Q. And did you reach out to Facebook?

13:42:50 23 A. Yes, I did.

13:42:51 24 Q. And who did you reach out to?

13:42:55 25 A. Well, the people that I had -- I had these meetings with

13:43:00 1 previously, you know, were not going to return my call at this
13:43:05 2 point. So I met the head of Facebook Messenger, a really nice
13:43:09 3 guy by the name of Stan Chudnovsky at a ski trip in Canada and
13:43:13 4 asked if we can get together. And we set up a meeting with him
13:43:19 5 and also with David Marcus. So Stan was head of Facebook
13:43:23 6 Messenger, and David Marcus was head of all messaging at
13:43:29 7 Facebook, which included Messenger as well as WhatsApp.

13:43:33 8 Q. And did you meet?

13:43:34 9 A. Yes, I did.

13:43:35 10 Q. Where did you meet?

13:43:36 11 A. At Facebook headquarters.

13:43:38 12 Q. And what did you discuss?

13:43:40 13 A. So, you know, Facebook Live and Instagram Live, these
13:43:43 14 weren't their areas. They were, you know, on the Messenger
13:43:47 15 side of things. But that was -- these were the people that
13:43:51 16 were sort of as high up in Facebook as I could get to try to
13:43:55 17 have a friendly conversation.

13:43:57 18 And I congratulated them on the launch of Facebook
13:44:00 19 Live, and I basically said, you know, I know you guys weren't
13:44:04 20 here before when we had all these conversations, but there is a
13:44:08 21 little bit of history. And we are, you know, the experts in
13:44:12 22 this area of live messaging. We invented it. We patented it.
13:44:19 23 And we'd love to discuss, you know, doing something with you
13:44:23 24 guys, whether that's licensing or acquisition or anything else.
13:44:27 25 We think we could add significant value.

13:44:29 1 Q. And how did you end that meeting?

13:44:32 2 A. I told Stan that I would send him an overview of our

13:44:35 3 patent portfolio, and I asked him if he would send it on to the

13:44:40 4 legal team at Facebook.

13:44:41 5 Q. And did you do that?

13:44:42 6 A. Yes, I did.

13:44:43 7 Q. And when did you do that?

13:44:45 8 A. The -- I don't know the exact date of the e-mail right.

13:44:49 9 It was right after the meeting, in early 2016.

13:44:52 10 MR. STONE: And let's pull up Exhibit P-802. It's

13:44:55 11 not admitted as of yet. Are you still objecting to this?

13:44:58 12 MS. ANDERSON: Your Honor, it is already admitted as

13:45:00 13 802, 803, and 804.

13:45:04 14 MR. STONE: Okay. How about the cover e-mail?

13:45:06 15 Sorry. One second. So if we could pull P-802. It is

13:45:14 16 admitted.

13:45:14 17 THE COURT: I didn't understand you.

13:45:16 18 MR. STONE: Sorry. We're going to pull Exhibit

13:45:19 19 P-802, which is now as I understand it admitted, Your Honor.

13:45:24 20 THE COURT: All right.

13:45:24 21 Q. (BY MR. STONE) Mr. Katis, do you recognize this e-mail?

13:45:27 22 A. Yes, I do.

13:45:28 23 Q. And what is this?

13:45:29 24 A. This is an e-mail right after the meeting from myself to

13:45:38 25 Stan Chudnovsky at Facebook on February 4th, 2016.

13:45:41 1 Q. And there's -- are there attachments referenced in this
13:45:45 2 e-mail?

13:45:45 3 A. Yes, there are. There's two.

13:45:51 4 Q. And did you send those as well?

13:45:53 5 A. Yes, I did.

13:45:54 6 MR. STONE: And if we could please pull up P-803,
13:45:56 7 which is admitted.

13:45:57 8 Q. And Mr. Katis, what is this document?

13:46:00 9 A. So this is one of those two documents on the e-mail. This
13:46:05 10 was sort of the overview deck of our overall patent strategies
13:46:09 11 and the various patent families.

13:46:11 12 MR. STONE: And if we could pull up admitted Exhibit
13:46:13 13 P-804, please.

13:46:14 14 Q. And do you recognize this?

13:46:15 15 A. Yes, I do.

13:46:21 16 Q. And what's this?

13:46:22 17 A. This is a summary of our patent portfolio. And, again,
13:46:26 18 it's broken down into patent families since they -- you know,
13:46:31 19 there were a lot of different patents that issued at different
13:46:34 20 times. So we tried to organize them in a way that made sense
13:46:40 21 into the distinct patent families.

13:46:41 22 Q. And did these documents specifically identify the patents
13:46:46 23 asserted here?

13:46:47 24 A. No, they did not.

13:46:48 25 Q. What did they identify?

13:46:50 1 A. The -- the broader patent families. So patents are -- you
13:46:55 2 know, you don't get all your patents all at once. And, you
13:47:00 3 know, during the -- this is a -- you know, if you have an
13:47:04 4 aggressive patent intellectual property strategy, it involves,
13:47:07 5 you know, a series of patent families and multiple filings.

13:47:12 6 Q. Did Facebook respond to you providing them this
13:47:14 7 information?

13:47:14 8 A. Excuse me?

13:47:15 9 Q. Did Facebook respond to your having provided them this
13:47:20 10 information?

13:47:21 11 A. Yes. Stan replied.

13:47:22 12 Q. And did he respond favorably?

13:47:26 13 A. No, he did not.

13:47:28 14 Q. Let's show you what's been admitted as P-746.

13:47:31 15 And what's this?

13:47:32 16 A. So this is -- so at the very top it's me replying to Stan.
13:47:38 17 But immediately below that is Stan replying to my e-mail. So
13:47:42 18 he's -- he's -- you know, you can read it here. Basically he's
13:47:48 19 saying, you know, he thinks that we have a great IP, but he
13:47:58 20 doesn't believe that they infringe and that Facebook has no
13:48:00 21 interest.

13:48:01 22 Q. Now, when did Facebook roll out Facebook Live for
13:48:03 23 everyone?

13:48:04 24 A. It was a couple of months after this.

13:48:08 25 Q. And what about Instagram Live?

13:48:09 1 A. It was a little while after that.

13:48:12 2 Q. Now, after Facebook and Instagram Live were rolled out to

13:48:15 3 the public, did they ever offer to pay Voxer for a license?

13:48:19 4 A. No, they did not.

13:48:21 5 Q. And did you have any further interactions with Facebook?

13:48:27 6 A. I did not personally.

13:48:28 7 Q. Now, why did you file this lawsuit?

13:48:30 8 A. I mean, you know, we believe that Facebook Live and

13:48:36 9 Instagram Live used Voxer's technology, and we believe that we

13:48:40 10 should be compensated in some way. We believe this is sort of

13:48:44 11 a -- this is sort of a case that the patent system was sort of

13:48:48 12 made for. And, you know, it's -- as everybody knows, it's

13:48:55 13 tough as a small company to compete against a company like

13:49:00 14 Facebook. They're a great company.

13:49:03 15 MS. ANDERSON: Objection, Your Honor: move to strike

13:49:05 16 as nonresponsive and 403.

13:49:07 17 THE COURT: Sustained. The jury will disregard the

13:49:09 18 last statement.

13:49:10 19 THE WITNESS: It's --

13:49:11 20 THE COURT: Wait. When I --

13:49:12 21 MR. STONE: There's a question pending.

13:49:14 22 THE COURT: Let him come back to you and ask a new

13:49:18 23 question.

13:49:19 24 THE WITNESS: Yes, sir.

13:49:20 25 Q. (BY MR. STONE) What about -- was your decision to file the

13:49:24 1 lawsuit related in any way to your shareholders?

13:49:27 2 A. Yes. Obviously, I have a responsibility to my

13:49:31 3 shareholders, so I had to hang in there and see this through to

13:49:39 4 try to -- you know, at the end of the day, it's to try to right

13:49:42 5 a wrong, you know, that we perceive.

13:49:45 6 MR. STONE: I'm going to pass the witness,

13:49:47 7 Your Honor.

13:49:48 8 MS. ANDERSON: Thank you, Your Honor. If I could

13:49:50 9 have a moment to get this set up?

13:49:52 10 THE COURT: You may.

13:49:54 11 MS. ANDERSON: Thank you.

13:49:55 12 I'll get this higher up for Your Honor so I'm a

13:49:57 13 little louder.

13:49:59 14 THE COURT: Well, I keep thinking I'm going to

13:50:01 15 rearrange this courtroom back to pre-plague days, but I haven't

13:50:05 16 gotten it done yet.

13:50:12 17 MS. ANDERSON: Your Honor, may I approach with some

13:50:15 18 binders for the court and the witness?

13:50:16 19 THE COURT: You may approach, and I will tell this to

13:50:21 20 all the lawyers. In my court you don't have to ask to approach

13:50:24 21 the witness. If you have business with the witness, go to the

13:50:26 22 witness, get your business over, and go back to the counsel

13:50:29 23 table. If I think you're badgering the witness, believe me, I

13:50:48 24 won't have any hesitancy to say anything about it. It will

13:50:51 25 just go more quickly that way.

13:50:53 1

CROSS-EXAMINATION13:50:53 2 **BY MS. ANDERSON:**

13:50:53 3 Q. All right. Good afternoon, Mr. Katis.

13:50:54 4 A. Good afternoon.

13:50:55 5 Q. Good to see you again, sir.

13:50:57 6 A. Good to see you.

13:50:58 7 Q. Before you begin, we would like to thank you for your

13:51:01 8 service, your two tours of your duty. We thank you for the

13:51:04 9 service you've given this country?

13:51:06 10 THE COURT: Pardon me. Just for our record, state
13:51:06 11 your name again.

13:51:06 12 MS. ANDERSON: Oh. Thank you, Your Honor.

13:51:07 13 Christa Anderson for Facebook and Instagram.

13:51:33 14 Q. All right. Mr. Katis, I'd like to begin with your
13:51:36 15 patents, if you can. And you have a binder before you. I have
13:51:39 16 some exhibits in there that I may ask you to turn to them from
13:51:43 17 time to time. And also we'll have your exhibits posted on the
13:51:47 18 screen before you from time to time as well.13:51:51 19 MS. ANDERSON: If we could please take a look at
13:51:59 20 Exhibit P-3 and put it up please. This is an already-admitted
13:52:01 21 exhibit.13:52:02 22 Q. Mr. Katis, you testified earlier this is your '270 patent,
13:52:06 23 correct?

13:52:06 24 A. That is correct.

13:52:07 25 Q. All right. And this patent issued on November 27th, 2018,

13:52:11 1 right? That's the date in the top, right?

13:52:18 2 A. That is correct.

13:52:19 3 Q. All right. And the file date for the application for this
13:52:23 4 patent is May 2nd, 2017; is that right?

13:52:26 5 A. I'll take your word for it.

13:52:28 6 Q. Do you see the highlighted date at line 22?

13:52:32 7 A. Yes, I do.

13:52:33 8 Q. Okay. Great.

13:52:35 9 MS. ANDERSON: Now let's turn to Exhibit P-4, if we
13:52:37 10 may.

13:52:37 11 Q. Exhibit P-4 is your '557 patent, right, sir?

13:52:43 12 A. That is correct.

13:52:44 13 Q. And the '557 patent issued on December 71th, 2019,
13:52:53 14 correct?

13:52:53 15 A. That is correct.

13:52:55 16 Q. All right. And the file date for the application for the
13:52:58 17 '557 patent is October 16th, 2018; is that right?

13:53:06 18 A. That is correct.

13:53:06 19 Q. So these applications and patents issued between 2017 and
13:53:11 20 2019, right?

13:53:13 21 A. That is correct.

13:53:13 22 Q. All right. Now, the 2012 meetings that you've testified
13:53:18 23 about in this case so far, the ones that occurred with
13:53:23 24 Mr. Schroepfer and others at Facebook, those occurred more than
13:53:27 25 five years before those dates that we've been talking about,

13:53:30 1 right?

13:53:31 2 A. Correct. Although we had plenty of patents back then of

13:53:36 3 these same patent families.

13:53:38 4 Q. And, Mr. Katis, the patents we're talking about right now,

13:53:41 5 the '270, and '557, those ones issued more than five years

13:53:46 6 after the 2012 discussions, right?

13:53:48 7 A. Yes. But they're part of patent families.

13:53:52 8 Q. Now, you mentioned in your earlier testimony, sir, that,

13:53:56 9 in 2012, in some of those discussions that Voxer

13:53:59 10 representatives told Facebook about applications for patents or

13:54:03 11 actual patents. Do you recall that?

13:54:05 12 A. Yes.

13:54:05 13 Q. All right. Whatever patent applications or patents you

13:54:09 14 are talking about in 2012, those did not include the ones we

13:54:13 15 just referenced in Exhibit P-3 and P-4, right?

13:54:17 16 A. That is correct. It's not practical to sue for 150

13:54:21 17 patents.

13:54:22 18 Q. And, in fact, during your discussions with Facebook in

13:54:25 19 2012, you did not specify any particular patent numbers or

13:54:29 20 patent applications, right?

13:54:33 21 A. That's correct.

13:54:33 22 Q. You didn't call out any particular numbers for patents,

13:54:38 23 right?

13:54:39 24 A. That's correct.

13:54:39 25 Q. And you also said that the discussions that you had with

13:54:43 1 Facebook in the 2012 time frame, and before that, generally
13:54:50 2 concerned the Voxer app. Do you recall your testimony?

13:54:52 3 A. No. That's misleading.

13:54:57 4 Q. Okay. Sir, did you ever discuss the Voxer app in your
13:55:01 5 2010 and 2012 discussions?

13:55:02 6 A. Yes.

13:55:03 7 Q. You did. And the Voxer app that you were discussing in
13:55:06 8 that time frame was not using the inventions of the '270 and
13:55:10 9 '557 patents that have been asserted against Facebook in this
13:55:14 10 case, right?

13:55:15 11 A. The -- these patents are part of patent families that
13:55:19 12 Voxer absolutely utilizes.

13:55:22 13 Q. Okay. I'd just like to clarify, sir. I'm only talking
13:55:27 14 about the patents-in-suit in this case, the '270 and the '557,
13:55:32 15 okay?

13:55:33 16 Do you agree that the Voxer app does not practice the
13:55:38 17 '270 and '557 patent claims that have been asserted against
13:55:43 18 Facebook in this case?

13:55:45 19 A. I disagree.

13:55:45 20 MR. STONE: Your Honor, I object. She's seeking what
13:55:48 21 would be expert testimony, potentially.

13:55:49 22 THE COURT: I didn't understand you, your voice
13:55:51 23 trailed off.

13:55:52 24 MR. STONE: Objection: She's seeking expert
13:55:56 25 testimony.

13:55:57 1 THE COURT: No. She's cross-examining him, and he
13:56:02 2 knows about his patents and he testified about his patents.

13:56:05 3 The objection is overruled. You may proceed.

13:56:07 4 A. The -- these patents are part of families that the Voxer
13:56:11 5 app absolutely is an implementation of the technology that's
13:56:16 6 described in these patents.

13:56:18 7 Q. Sir, I'd like you to focus on my question. I am not
13:56:23 8 asking you about patent families. My question to you is:
13:56:29 9 Isn't it true that the Voxer app has never practiced the
13:56:33 10 asserted claims of the '270 patent?

13:56:38 11 A. I can't state that. I don't agree with that statement.

13:56:41 12 Q. You don't know either way; is that right?

13:56:44 13 A. That would not seem to be the case to me.

13:56:46 14 Q. All right. Sir, I'd like you to take a look at, if you
13:56:50 15 would, in your binder an exhibit that has been marked as
13:56:53 16 DTX305.

13:56:56 17 MS. ANDERSON: Your Honor, this is not admitted, so
13:56:58 18 if I could just publish it to the witness, that would be great.

13:57:01 19 THE COURT: You may publish to the witness only.

13:57:05 20 Q. (BY MS. ANDERSON) Mr. Katis, you are aware as a
13:57:07 21 representative of Voxer in this litigation that Voxer had to
13:57:10 22 answer questions put to it in the court proceedings about Voxer
13:57:13 23 and this app. Do you recall that, generally?

13:57:15 24 A. When was this?

13:57:16 25 Q. Are you familiar with the fact that Voxer responded to

13:57:19 1 interrogatories in this case?

13:57:20 2 A. I mean, this is something that happened between the

13:57:31 3 attorneys and this, right?

13:57:32 4 Q. Okay. So is it your testimony that you have never seen

13:57:37 5 Exhibit DTX305?

13:57:38 6 A. I don't recall ever seeing this, yes.

13:57:43 7 Q. All right. Sir, do you agree with the fact that the Voxer

13:57:48 8 app has never provided the ability to send real-time video

13:57:54 9 messaging? That's true, right?

13:57:55 10 A. In terms of video, the -- the system can enable it, but

13:58:00 11 the apps -- it's not currently enabled in the apps. It is --

13:58:06 12 it is built into the overall system, but we never enabled it.

13:58:12 13 Q. So, sir, it is correct that the Voxer product never

13:58:15 14 provided the ability to send real-time video messages, right?

13:58:19 15 A. Not to end consumers.

13:58:23 16 MS. ANDERSON: Okay. Can we please play the

13:58:25 17 testimony of Mr. Tom Katis, page 222, lines 4 through 21.

13:58:29 18 MR. STONE: Can I can see it, please?

13:58:30 19 MS. ANDERSON: Excuse me. Page 222, lines 4

13:58:33 20 through 7. Excuse me.

13:58:35 21 And, actually, Your Honor, I'm going to withdraw the

13:58:39 22 question.

13:58:40 23 Q. Sir, do you agree that the Voxer app currently does not

13:58:43 24 enable the sending of real-time video messages?

13:58:48 25 A. I agree with that.

13:58:50 1 Q. All right. Thank you.

13:58:53 2 Sir, real-time video communication is a requirement
13:58:56 3 for all the asserted claims in this case; is that right?

13:59:16 4 A. Yes. Just for point of clarification, the server
13:59:20 5 absolutely enables it. The current implementation of the apps
13:59:24 6 does not.

13:59:24 7 MS. ANDERSON: Move to strike as nonresponsive,
13:59:26 8 Your Honor, the clarification statement.

13:59:27 9 THE COURT: Sustained.

13:59:29 10 Q. (BY MS. ANDERSON) Now, Mr. Katis, you testified earlier
13:59:32 11 about a provisional application filed with the Patent and
13:59:36 12 Trademark Office in 2007. Do you recall that?

13:59:39 13 A. Yes, I do.

13:59:40 14 Q. And that was Exhibit P-5?

13:59:42 15 A. Hold on.

13:59:43 16 Q. Do you recall that?

13:59:44 17 MS. ANDERSON: If we could have that up on the
13:59:46 18 screen, please. That one has been admitted.

13:59:49 19 A. Yes.

13:59:49 20 Q. Let's take a look at this on the screen. Do you recall
13:59:53 21 this provisional application, sir?

13:59:55 22 A. Yes, I do.

13:59:56 23 Q. Thank you. And if we could turn your attention to page 3
14:00:02 24 of the exhibit, and this exhibit is paginated at the bottom.

14:00:05 25 A. Five, dash, 3?

14:00:06 1 Q. Yes, please. Five, dash, 3.

14:00:07 2 And the submission you made was entitled "Rethinking

14:00:10 3 Voice Communication," right.

14:00:17 4 A. That's correct.

14:00:18 5 Q. And it indicates that this paper that we're reading from

14:00:21 6 was authored by you and Mr. Ranney; is that right?

14:00:25 7 A. That's correct.

14:00:26 8 Q. Okay. And if you could turn to the next page, page 4, of

14:00:32 9 your exhibit. You see your description of your invention,

14:00:35 10 right?

14:00:35 11 A. Yes, I do.

14:00:36 12 Q. All right. You authored this along with Mr. Ranney,

14:00:40 13 right?

14:00:40 14 A. That's correct.

14:00:41 15 Q. And you see listed on this page critical components. Do

14:00:45 16 you see that?

14:00:46 17 A. Yes, I do.

14:00:47 18 Q. About the middle of the page, critical components of your

14:00:52 19 invention?

14:00:52 20 A. Yes, I do.

14:00:53 21 MS. ANDERSON: Could we highlight that, please?

14:00:55 22 Q. And drawing your attention to the list of critical

14:00:58 23 components, you see the third item --

14:01:01 24 MS. ANDERSON: If we could highlight that, please.

14:01:03 25 Q. -- you identify as a critical component, quote, stream and

14:01:06 1 store protocol, streaming voice video or other media as quickly
14:01:10 2 as possible while still guaranteeing delivery, even when
14:01:19 3 network conditions are poor, end quote.

14:01:22 4 Do you see that?

14:01:23 5 A. Yes.

14:01:23 6 Q. And you identified that to the Patent and Trademark
14:01:28 7 Office, right?

14:01:29 8 A. In our first provisional, yes.

14:01:31 9 Q. Right. And let's take a look at page 16 of this exhibit
14:01:35 10 as well. So that would be page 5-16.

14:01:39 11 On this page, sir, you have identified at the top,
14:01:43 12 you call it "prototype features." Do you see that?

14:01:46 13 A. Correct, yes.

14:01:47 14 Q. And these are prototype features of your invention, right?

14:01:51 15 A. Yeah. Potential prototype features.

14:01:53 16 Q. Okay. And then the third bullet point of the third
14:01:58 17 feature identified in a bullet point is here is, quote, all
14:02:07 18 communications are delivered reliably to the intended recipient
14:02:12 19 using the CT store and stream technology. This means that all
14:02:16 20 messages will be stored on both clients and servers, though
14:02:20 21 they will be available for consumption or propagation while the
14:02:23 22 message is being received, end quote.

14:02:26 23 Do you see that?

14:02:27 24 A. Yes, I do.

14:02:28 25 Q. And that was another statement you submitted to the Patent

14:02:31 1 and Trademark Office, right?

14:02:33 2 A. Yes. And I think it does a reasonable job of describing
14:02:35 3 the nature of live messaging to some degree.

14:02:38 4 Q. Thank you.

14:02:38 5 A. Obviously it's a very early terminology.

14:02:41 6 Q. Thank you. Now, if you would, sir, we're going to take a
14:02:43 7 look at Exhibit P-6.

14:02:44 8 MS. ANDERSON: If we could have that up, please.

14:02:46 9 Q. This was the other provisional application you testified
14:02:50 10 about earlier, correct, sir?

14:02:51 11 A. Yes.

14:02:52 12 Q. Okay. And if we could take a look at page 13, so it's
14:02:58 13 6-13 of this exhibit. I believe you were looking at this page
14:03:02 14 earlier during your testimony; is that right?

14:03:04 15 A. Yes.

14:03:04 16 Q. Okay. And it's entitled "RebelVox Market Overview," and
14:03:10 17 you talk about target market description. Do you see that?

14:03:12 18 A. Yes, I do.

14:03:18 19 Q. And do you see in the second paragraph you say, "RebelVox
14:03:23 20 provides significant functionality and value to the following
14:03:26 21 markets and application spaces, including but not limited to."

14:03:30 22 Do you see that?

14:03:32 23 A. Yes, I do.

14:03:34 24 Q. Okay. And then listed Number 6 --

14:03:38 25 MS. ANDERSON: If we could highlight that, please.

14:03:40 1 Q. -- you identify tactical communications where control,
14:03:45 2 message management, replay, pause, catch up to live, archiving,
14:03:49 3 guaranteed delivery, and sophisticated routing can enable a
14:03:53 4 more robust and safe response to tactical situations, end
14:04:02 5 quote.

14:04:03 6 I've read that correct correctly, right?

14:04:06 7 A. Yes.

14:04:08 8 Q. And you submitted that to the Patent and Trademark Office
14:04:10 9 as well, correct?

14:04:10 10 A. Yes. As part of the provisional.

14:04:12 11 Q. Thank you. All right. We can set that aside now.

14:04:16 12 Now, you testified earlier about discussions
14:04:19 13 concerning the possibility of Facebook paying some form of
14:04:22 14 money for Voxer technology. Do you recall generally your
14:04:24 15 testimony?

14:04:25 16 A. Yes.

14:04:25 17 Q. Back in the 2011 and 2012 time frame, Facebook was not the
14:04:30 18 only company that Voxer was willing to talk to about a possible
14:04:32 19 deal in that regard, right?

14:04:36 20 A. I'm not sure what you're getting at. I mean, Facebook was
14:04:43 21 the only company that had been that aggressive about pursuing
14:04:47 22 us.

14:04:47 23 Q. Do you agree, sir, that Facebook wasn't the only company
14:04:51 24 that Voxer was willing to consider talking about a possible
14:04:56 25 money deal with about IP at the time, right?

14:05:00 1 A. Well, I think you're specifically referring to a company
14:05:02 2 that we would sell to or do a major deal with like we
14:05:05 3 described.

14:05:06 4 Q. Well, at the time, 2011-2012 time frame, you expected to
14:05:11 5 meet other companies who might want to purchase or otherwise
14:05:14 6 pay money to Voxer for intellectual property, right?

14:05:19 7 A. Yes. It was pretty much all inbound at this point because
14:05:22 8 we were such a popular app, so we were happy to talk all the
14:05:26 9 biggest tech firms.

14:05:27 10 Q. Great. So let's take a look at Exhibit P-743, which is
14:05:32 11 already admitted.

14:05:33 12 Mr. Katis, this is an e-mail we looked at before, an
14:05:37 13 e-mail from you to Mr. Matt Ranney.

14:05:39 14 A. Yes.

14:05:39 15 Q. And drawing your attention to the top e-mail where you
14:05:42 16 write, "In the next two weeks, we'll be meeting with Facebook,
14:05:46 17 Google, and most of the top VCs for initial meetings. I don't
14:05:50 18 know where this is going to go. I'm open to anything."

14:06:01 19 Those were your words to Mr. Ranney at the time,
14:06:07 20 right?

14:06:07 21 A. That's correct.

14:06:07 22 Q. And then drawing your attention down a second sentence
14:06:11 23 below, "Even if we do not want to sell ASAP, we would not want
14:06:14 24 to appear frantic." Do you see that?

14:06:17 25 A. Yes, I do.

14:06:18 1 MS. ANDERSON: And if we could highlight the "even
14:06:21 2 if" sentence, Mr. Fisher, that would be great as well.

14:06:25 3 Thank you.

14:06:25 4 Q. And that was a communication you had internally at Voxer
14:06:33 5 in the 2011 time frame, right?

14:06:35 6 A. Yes. This is an e-mail from me to Matt Ranney.

14:06:37 7 Q. All right. And at this time, in your words, you were
14:06:40 8 expecting to meet with basically the whole world about your
14:06:44 9 app, right?

14:06:48 10 A. It appeared that way at the time. There was a lot of
14:06:51 11 inbound.

14:06:52 12 Q. Okay. And specifically as related to Facebook, you've
14:06:54 13 said that you were hoping to enter a deal with Facebook, any
14:06:57 14 kind of deal, including potentially licensing intellectual
14:07:01 15 property, right?

14:07:02 16 A. Yeah. I wouldn't say any type of a deal, but there were
14:07:07 17 definitely deals that we would have contemplated, sure.

14:07:13 18 Q. Right. But not a single company has entered an agreement
14:07:16 19 to pay money for a license to Voxer's intellectual property,
14:07:20 20 right?

14:07:20 21 A. We have lots of customers who license our technology. I
14:07:24 22 think what you're confusing is we haven't sold the business to
14:07:27 23 anybody else. Like, that was super-confusing in the opening
14:07:30 24 statements where you're saying "not a single." We have
14:07:32 25 hundreds, hundreds of customers who license our technology.

14:07:36 1 Hundreds. And what the confusion is that you're claiming that
14:07:39 2 we didn't sell the company or, like, its whole patent portfolio
14:07:44 3 to someone. That's correct. We didn't sell the company. We
14:07:49 4 didn't do a deal like we contemplated with Facebook. But we
14:07:52 5 have hundreds of companies who license our technology.

14:07:54 6 Q. Okay. Mr. Katis, would you please turn to Defendant's
14:07:58 7 Exhibit 609. This is Voxer's supplemental objections and
14:08:03 8 response to Defendant Facebook's interrogatories.

14:08:06 9 Do you see that?

14:08:07 10 A. I'm looking for it. You said 609?

14:08:10 11 Q. Yes. DTX609, please.

14:08:13 12 A. Okay.

14:08:14 13 Q. Do you have that before you?

14:08:15 14 A. I do.

14:08:16 15 Q. All right. And turning your attention to page 11 of 12,
14:08:25 16 this is a document that was submitted to Facebook in this
14:08:28 17 matter and signed by your counsel, right?

14:08:32 18 A. That's correct.

14:08:34 19 Q. All right. Now, please turn, if you would, to page 5
14:08:39 20 where it says Interrogatory Number 7. Do you see that? Sort
14:08:48 21 of towards the bottom of that page 5.

14:08:50 22 A. Number 7. Yes, I do.

14:08:52 23 Q. And do you see the question that starts, "Identify all
14:08:55 24 current and former licensees of the patents-in-suit." Do you
14:09:00 25 see that?

14:09:00 1 A. Yes, I do.

14:09:07 2 Q. All right. And if you would, please, sir, turn to the
14:09:11 3 next page, page 6. Do you see where it says, "Response to
14:09:17 4 Interrogatory Number 7"?

14:09:19 5 A. Yes.

14:09:19 6 Q. And you see Voxer makes some statements there, but I'd
14:09:22 7 like to draw your attention to almost the end of page 6 there
14:09:26 8 where it says, quote, At present, there are no current or
14:09:29 9 former licensees of the patents-in-suit, end quote.

14:09:32 10 Do you see that?

14:09:32 11 A. So, just to clarify, as I said before, I've never seen
14:09:36 12 this document before.

14:09:39 13 Q. Sir?

14:09:39 14 MS. ANDERSON: Your Honor?

14:09:40 15 A. But it would appear to me --

14:09:42 16 THE COURT: No. Just answer her question.

14:09:44 17 THE WITNESS: Sure. Yes, sir.

14:09:45 18 THE COURT: Your lawyer will have another opportunity
14:09:46 19 to question you if he wants to elicit more information.

14:09:49 20 THE WITNESS: Yes, sir.

14:09:51 21 A. So that is what it says here.

14:09:54 22 Q. All right. Thank you, sir. Now, sir, in the
14:09:58 23 2010-2011-2012 time frame, you knew that there were many
14:10:02 24 reasons that a company like Facebook might decide that Voxer
14:10:05 25 technology wasn't right for it, right?

14:10:07 1 A. Absolutely.

14:10:09 2 Q. Okay. And, in fact, if we could take a look at

14:10:12 3 Exhibit 752, which is already admitted, you talked about this

14:10:24 4 issue in the e-mail that you sent to Voxer employees on or

14:10:29 5 about August 17th, 2001, right?

14:10:32 6 A. Yes. It appears that way.

14:10:34 7 Q. Okay. And then drawing your attention to the paragraph

14:10:37 8 that's numbered 2, your discussing here the follow-up from a

14:10:49 9 meeting with Facebook. You say, quote, Don't get bent out of

14:10:52 10 shape on this. Regardless of how good a first meeting is,

14:10:59 11 these things usually go sideways for a long time. They have a

14:11:05 12 million things to figure out for their strategy, and trying to

14:11:11 13 fit it in a brand-new technology is hard. We will likely have

14:11:17 14 to prove things on our own before they will take a chance on

14:11:23 15 us. But now they are aware of us and will be watching. We

14:11:28 16 need to totally kick ass over the next few months and get the

14:11:31 17 app to a higher level, end quote.

14:11:33 18 Do you see that?

14:11:35 19 A. Yes, I do.

14:11:36 20 Q. All right. So you knew at the time that there were a

14:11:38 21 million things that would have to be figured out before any

14:11:41 22 deal could be done, right?

14:11:42 23 A. Absolutely. Especially because this was more than a year

14:11:46 24 before we launched.

14:11:47 25 Q. By the way, when we are still discussing this exhibit, if

14:11:51 1 I can draw your attention to the third numbered paragraph in
14:11:55 2 this e-mail you spend a moment in this e-mail to congratulate
14:11:58 3 one of your employees, right?

14:12:00 4 A. Yes.

14:12:00 5 Q. Yes. So one of your employees named Andy is being
14:12:05 6 congratulated by you in this e-mail for pursuing Facebook in
14:12:09 7 order to ultimately get a meeting set up between Voxer and
14:12:14 8 Facebook in 2010. Do you see that?

14:12:16 9 A. Yeah. As I think I mentioned before, this meeting was
14:12:21 10 based on a chance meeting of Andy.

14:12:23 11 Q. And you say in your e-mail, this third paragraph you say,
14:12:26 12 quote, Andy got this meeting set up by networking with a friend
14:12:31 13 of his who works at Facebook. This wasn't the first time Andy
14:12:34 14 went there and met with him, end quote.

14:12:36 15 Do you see that?

14:12:37 16 A. Okay.

14:12:38 17 Q. Do you see that, sir?

14:12:39 18 A. I'm looking for the part --

14:12:43 19 Q. Oh, sure. It's the first two lines of paragraph 3?

14:12:47 20 A. I can see that, yes.

14:12:47 21 Q. Okay. That's what you said to Voxer, right?

14:12:50 22 A. Yes.

14:12:50 23 Q. And at the end you concluded that paragraph with, quote,
14:12:55 24 Kudos to Andy for nailing this one, end quote. Right?

14:13:02 25 A. Yes. And I'll point out again this was more than a year

14:13:04 1 before we launched, and this was before all the inbound.

14:13:07 2 Q. And now even after your February 2012 meetings, you knew

14:13:13 3 it was uncertain whether a deal could be done between the

14:13:16 4 companies, right?

14:13:17 5 A. It's always uncertain, yes.

14:13:19 6 Q. Yeah. And even as of early March of 2012, you were still

14:13:23 7 skeptical that any deal would work for both companies, right?

14:13:25 8 A. In general in business, business deals generally fall

14:13:30 9 apart, and I never count on them until they happen.

14:13:34 10 Q. Yeah. All right. Now lets talk a little bit about --

14:13:38 11 MS. ANDERSON: Yeah. we can take that down.

14:13:38 12 Q. Let's talk a little bit about the intellectual property

14:13:41 13 that you say Voxer was trying to market to Facebook and other

14:13:46 14 companies. There are limits to what you say Voxer claims to

14:13:50 15 have invented in communications. Wouldn't you agree?

14:13:53 16 A. Absolutely.

14:13:53 17 Q. All right. So, for example, Voxer did not invent

14:14:00 18 livestreaming video, correct?

14:14:01 19 A. Right.

14:14:02 20 Q. Voxer did not invent instant messaging?

14:14:05 21 A. Correct.

14:14:06 22 Q. Voxer did not invent SMS, which is a form of text

14:14:09 23 messaging, right?

14:14:10 24 A. Correct.

14:14:11 25 Q. Voxer did not invent push-to-talk, right?

14:14:13 1 A. No. We kind of reinvented it, but we didn't invent
14:14:16 2 push-to-talk. There were many inventions before us.
14:14:19 3 Q. Voxer did not invent live voice communications either,
14:14:22 4 right?
14:14:22 5 A. No. That's the telephone.
14:14:23 6 Q. Right. Voxer did not invent time-shifting of video or
14:14:27 7 recording something live and watching something later?
14:14:29 8 A. No. VCRs and TIVOs, yeah.
14:14:32 9 Q. Right. They've been around. Voxer did not invent the
14:14:33 10 concept of turning human-readable names into a recipient's IP
14:14:38 11 address, right?
14:14:39 12 A. No.
14:14:39 13 Q. And, to be clear, I don't want double-negatives just in
14:14:44 14 case.
14:14:44 15 A. So we did not invent that.
14:14:46 16 Q. You did not invent that.
14:14:48 17 A. To be clear, we did not invent that.
14:14:50 18 Q. Thank you, sir. And Voxer also didn't invent the domain
14:14:53 19 name system technology, right?
14:14:54 20 A. We certainly did not invent that.
14:14:56 21 Q. Okay. Instead, when you were asked to describe what Voxer
14:15:02 22 invented before this lawsuit, you said that Voxer -- Voxer
14:15:05 23 invented turning your phone into a walkie-talkie, right?
14:15:08 24 A. That's simplified marketing speak. That's not -- has
14:15:13 25 nothing to do with the nature of invention.

14:15:15 1 Q. You said that, though, right, sir?

14:15:16 2 A. I've called the app a walkie-talkie app even though I know
14:15:23 3 it doesn't exactly work like a walkie-talkie. And we knew it
14:15:26 4 was marketing speak and then technical speak, and then there's,
14:15:29 5 separate from that, legal documents.

14:15:31 6 MS. ANDERSON: And if we could play clips from
14:15:34 7 FBVOX0034084, which is an interview that Mr. Katis gave at the
14:15:39 8 Le Web Conference.

14:15:40 9 MR. STONE: We haven't seen this.

14:16:37 10 (Video played)

14:16:37 11 UNIDENTIFIED SPEAKER: What is Voxer?

14:16:37 12 MR. KATIS: Sure. I mean, just simply, Voxer turns
14:16:37 13 your phone into a walkie-talkie.

14:16:37 14 What we did invent was the ability to have them both
14:16:20 15 be the same thing at the same time. So when you're speaking if
14:16:24 16 somebody is listening to you, they hear you while you're
14:16:27 17 speaking. They hear you live.

14:16:28 18 UNIDENTIFIED SPEAKER: Live.

14:16:28 19 MR. KATIS: Live. But whether they're listening or
14:16:30 20 not, they're still getting it as a message.

14:16:33 21 (Video stopped)

14:16:33 22 Q. (BY MS. ANDERSON) All right. Let's move forward in time
14:16:39 23 to the 2015 time frame. Facebook Live launched in or around
14:16:45 24 late 2015, correct?

14:16:48 25 A. Yes. That's correct.

14:16:50 1 Q. And then you arranged for a meeting with Facebook
14:16:54 2 representatives sometime around mid January 2016?

14:16:58 3 A. Sometime around then.

14:16:59 4 Q. All right. And you said that meeting was with Facebook's
14:17:02 5 David Marcus and Stan Chudnovsky, correct?

14:17:05 6 A. That's correct.

14:17:05 7 Q. And during that meeting, you congratulated Facebook on
14:17:10 8 launching Facebook Live, right?

14:17:11 9 A. Yes.

14:17:12 10 Q. All right. You also told Facebook that Facebook Live
14:17:16 11 seems like a great product, right?

14:17:18 12 A. Yes.

14:17:19 13 Q. All right. And, soon thereafter, you sent the e-mail to
14:17:24 14 Facebook that you described as on e-mail from yourself to
14:17:29 15 Mr. Chudnovsky dated February 4, 2016. Do you recall that?

14:17:33 16 A. That's correct.

14:17:33 17 MS. ANDERSON: All right. If we could please,
14:17:35 18 Mr. Fisher, display Exhibit P-802.

14:17:44 19 Q. And you went over this a little earlier with your counsel
14:17:47 20 right, sir?

14:17:48 21 A. Yes.

14:17:48 22 Q. Exhibit P-802, this February 2016 e-mail that you sent, is
14:17:55 23 the only written documentation you know of that Voxer ever
14:18:00 24 provided to Facebook identifying any particular patent numbers
14:18:04 25 in connection with discussions, right?

14:18:06 1 A. This is the only documentation of it, yes.

14:18:09 2 Q. All right. And you did make your e-mails and documents

14:18:12 3 available to your counsel to produce in this case, right?

14:18:15 4 A. Yes.

14:18:16 5 Q. Now, let's take a look at your correspondence in this

14:18:23 6 exhibit, drawing your attention to the two paragraphs of your

14:18:27 7 e-mail.

14:18:28 8 A. Uh-huh.

14:18:29 9 Q. You state, quote, Here is an overview deck and a more

14:18:34 10 detailed IP statement that highlights some of our key patents.

14:18:39 11 As we discussed, we keep getting inbound interest. But if we

14:18:44 12 go down that road, we'd rather start with someone like

14:18:47 13 yourselves that we feel we share common values and culture

14:18:51 14 with. I'm on Necker the next week but will follow up after.

14:18:57 15 That's what you wrote to Facebook on February 4,

14:19:01 16 2016, right?

14:19:02 17 A. Yes. That's correct.

14:19:03 18 MS. ANDERSON: Could we pull blow that up, please,

14:19:08 19 Mr. Fisher so it's a little bit easier to read, that would be

14:19:10 20 great.

14:19:11 21 Q. Now, per your statement in this exhibit, you left for a

14:19:15 22 visit to Necker after sending this e-mail; is that right?

14:19:19 23 A. It would appear so.

14:19:20 24 Q. And that's Richard Branson's private luxury island Necker?

14:19:24 25 Is that the one?

14:19:25 1 A. It's also a retreat for a lot of tech people, including
14:19:28 2 Facebook and former Facebook people, who I've visited with.
14:19:31 3 Q. But that's the island, the luxury island?
14:19:34 4 A. That is, yes. And where I met Stan Chudnovsky was a
14:19:38 5 similar type of a trip to a ski lodge in British Columbia with
14:19:42 6 a lot of other Facebook people there.
14:19:42 7 Q. Respectfully, sir, please concentrate on the question.
14:19:46 8 MS. ANDERSON: Your Honor, I move to strike,
14:19:47 9 nonresponsive.
14:19:48 10 THE COURT: Sustained. The jury will disregard the
14:19:50 11 last statement.
14:19:51 12 And, Mr. Katis, please just answer her questions and
14:19:56 13 don't interject anything else.
14:19:58 14 THE WITNESS: Yes, sir. Okay. Yes, sir.
14:20:01 15 Q. (BY MS. ANDERSON) Now, sir, when you returned in February
14:20:04 16 of 2016 from your trip to Necker, you went on a ski trip with a
14:20:10 17 number of entrepreneurs and other people, including Facebook
14:20:16 18 reps; is that right?
14:20:16 19 A. There were some Facebook personnel there, yes.
14:20:19 20 Q. Okay. And the other Facebook representatives that were on
14:20:23 21 the ski trip were Mr. Stan Chudnovsky and Mr. Matt Pakes; is
14:20:28 22 that right?
14:20:28 23 A. Yes.
14:20:29 24 Q. And you flew home from that trip with Mr. Pakes, right?
14:20:36 25 A. Yes.

14:20:37 1 Q. And during that ride, you asked Mr. Pakes questions about
14:20:44 2 Facebook Live, right?

14:20:45 3 A. That's correct.

14:20:45 4 Q. All right. And you wanted to confirm your understanding
14:20:48 5 of how it worked; is that right?

14:20:53 6 A. Yes.

14:20:54 7 Q. Okay. When you returned from your ski trip, you did
14:20:57 8 ultimately get an answer from Facebook declining to enter into
14:21:03 9 an intellectual property deal with you; is that right?

14:21:06 10 A. That's correct.

14:21:07 11 Q. And we talked about that a bit already, right?

14:21:10 12 A. Uh-huh.

14:21:11 13 Q. Let's take a look at Exhibit 746, please. So we're at
14:21:27 14 P-746, please.

14:21:29 15 Now, this is the e-mail that we have discussed
14:21:36 16 earlier in which Mr. Chudnovsky indicates that they're
14:21:41 17 declining to enter into an agreement with Voxer regarding
14:21:46 18 intellectual property; is that right?

14:21:48 19 A. That's correct.

14:21:49 20 Q. All right. And in this particular e-mail, Mr. Chudnovsky
14:21:53 21 writes, quote, Hey, Tom and Irv. Hope all is well and
14:21:59 22 apologize for the long wait. Our guys just finished looking at
14:22:04 23 the portfolio. As you mentioned, you have great IP for the
14:22:07 24 space that Voxer is in. That said, all of our properties are
14:22:11 25 doing something completely different, and we currently have no

14:22:15 1 plans to extend into different territories. Would be happy to
14:22:20 2 have lunch and talk more about Voxer, et cetera. But,
14:22:23 3 currently, there isn't much appetite on our end, unfortunately.
14:22:28 4 Tom, hope Necker was fun. Was great fun for me, end quote.

14:22:33 5 That's the message you got from Mr. Chudnovsky in
14:22:35 6 total there, right?

14:22:36 7 A. That is correct.

14:22:37 8 Q. All right. Now, you responded to his message in the top
14:22:42 9 e-mail on Exhibit P-746, right?

14:22:44 10 A. That's correct.

14:22:46 11 Q. And in your response you do not accuse Facebook of
14:22:50 12 infringing any patents, right?

14:22:53 13 A. No, I do not.

14:22:54 14 Q. You don't accuse Facebook of infringing '557 or the '270
14:22:59 15 patent, right?

14:23:01 16 A. No, I do not.

14:23:01 17 Q. Instead, you state, "All good, Stan. Thanks for
14:23:06 18 forwarding it on. Would love to grab lunch again sometime."
14:23:10 19 Right?

14:23:10 20 A. That's correct.

14:23:12 21 Q. All right. Now, it was after these 2016 discussions we
14:23:19 22 have just covered, Voxer moved forward and ended up submitting
14:23:27 23 applications for new patents, the application filed for the
14:23:31 24 '270 and the '557 patent, right?
14:23:34 25 A. I believe it's a continual process.

14:23:36 1 Q. But those application dates we covered at the very
14:23:39 2 beginning of your testimony, one was filed in 2017?

14:23:42 3 A. Correct.

14:23:42 4 Q. One was filed in 2018, right, sir?

14:23:45 5 A. Yes. Yes.

14:23:46 6 Q. All right. And in this case you agree with me, sir, that
14:23:54 7 Voxer contends that Facebook first became aware of the '270
14:23:59 8 patent and its issued claims on November 27, 2018; is that
14:24:04 9 right?

14:24:05 10 A. Say that one more time.

14:24:07 11 Q. In this case Voxer contends that Facebook first became
14:24:12 12 aware of the '270 patent and its issued claims on
14:24:16 13 November 27, 2018, right?

14:24:19 14 A. Was that the published date? I'm not sure.

14:24:23 15 Q. That's the date of issuance?

14:24:25 16 A. Okay.

14:24:25 17 Q. And that's the date that Voxer claims Facebook was aware
14:24:28 18 of the patent, right?

14:24:29 19 A. I mean, that's the date of issuance. I'm not sure what's
14:24:33 20 been claimed in these.

14:24:34 21 Q. Okay. Let's take a look at DTX305 again. All right.

14:24:46 22 And, sir, again these are responses served by Voxer to Facebook
14:24:51 23 in this case regarding the allegations made by Voxer against
14:24:55 24 Facebook, right?

14:24:57 25 A. Yes.

14:24:58 1 Q. All right. Drawing your attention to a little bit farther
14:25:02 2 back in the document this time, page 33. Are you there yet?

14:25:18 3 A. I'm at page 33.

14:25:20 4 Q. Wonderful. And you see that this question generally is
14:25:24 5 asking for facts and circumstances, including without
14:25:27 6 limitation, the date on which you contend that Facebook first
14:25:30 7 became aware of the patents-in-suit and its claims.

14:25:33 8 Do you see that?

14:25:34 9 A. Yes, I do.

14:25:34 10 Q. All right. If you could turn now -- there's a lot of
14:25:39 11 lawyer language in here. But if you could turn your attention
14:25:42 12 to page 36, the second full paragraph, the second sentence,
14:25:49 13 Voxer writes, quote, Voxer contends that Facebook first became
14:25:52 14 aware of the '270 patent and its issued claims on November 27,
14:25:57 15 2018. Right?

14:25:58 16 A. That's what it says.

14:26:00 17 Q. That's what it says. And that's more than three years
14:26:02 18 after Facebook launched the Facebook Live product, right?

14:26:06 19 A. That's correct.

14:26:07 20 Q. Okay. And then drawing your attention to the next page,
14:26:10 21 the first full paragraph, the second sentence, you see it says:
14:26:15 22 "Voxer contends that Facebook first became aware of the '557
14:26:19 23 patent and its issued claims on December 17th, 2019."

14:26:23 24 Do you see that?

14:26:25 25 A. Sorry. I was reading the sentence before it.

14:26:27 1 Q. Oh, sure.

14:26:28 2 A. I thought you were reading that one.

14:26:30 3 So, yes, I can see that.

14:26:32 4 Q. And that's more than four years after Facebook Live

14:26:36 5 launched, right?

14:26:38 6 A. Yes.

14:26:39 7 Q. Yes. Thank you. All right. You can set that aside.

14:26:43 8 Now, Mr. Katis, you are aware that, in 2012 -- jump

14:26:52 9 back in time just for a moment here. In 2012 Voxer's head of

14:26:58 10 product management criticized Voxer for suffering from a lack

14:27:02 11 of focus, right?

14:27:04 12 A. No. Can you show me what you're talking about.

14:27:06 13 Q. Are you aware of that, sir?

14:27:08 14 A. No. If you could show me what you're referring to?

14:27:11 15 Q. Okay. Sure. Be happy to.

14:27:36 16 MS. ANDERSON: And I'll bring a few copies for the

14:27:38 17 Court.

14:27:59 18 Q. Okay. I am showing you what has been marked for

14:28:02 19 identification as DTX619, Bates Number Voxer-0037499 through

14:28:16 20 37502. Let's take a look at this for a moment, and I have a

14:28:22 21 couple of questions for you, sir.

14:28:56 22 Sir, we're not going to be publishing this e-mail,

14:28:59 23 but it's just being shown to you on the screen. This is an

14:29:04 24 e-mail that you received from Mr. Igal Perelman on April 24,

14:29:10 25 2012, right?

14:29:11 1 A. Uh-huh.

14:29:12 2 Q. And Mr. Perelman was the head of product management for

14:29:15 3 Voxer back then, right?

14:29:16 4 A. That's correct.

14:29:17 5 Q. And drawing your attention to paragraph 4, he tells you

14:29:26 6 that, quote, While we are doing much better, we still suffer

14:29:29 7 from lack of focus, end quote.

14:29:32 8 A. That's pretty much a problem at every company, ever.

14:29:35 9 Q. Sir, just focus on the question. That's what he told

14:29:39 10 you --

14:29:39 11 A. Okay.

14:29:40 12 Q. -- on April 24, 2012, right?

14:29:42 13 A. Where is it that he says that, exactly?

14:29:46 14 Q. Sure. Paragraph 4.

14:29:47 15 A. Okay.

14:29:47 16 Q. The first sentence of it. It's a numbered paragraph.

14:29:50 17 Mr. Perelman writes to you and says, quote, While we are doing

14:29:55 18 much better, we still suffer from lack of focus, end quote.

14:29:58 19 Right?

14:29:58 20 A. Yes.

14:29:58 21 Q. And that's what your head of product management was

14:30:01 22 telling you about the development of the product, right?

14:30:04 23 A. Yeah. We can always be better.

14:30:06 24 Q. And then he says a few sentences later, quote, We cannot

14:30:10 25 have many top priorities, end quote. Right?

14:30:14 1 A. Correct.

14:30:14 2 Q. And then drawing your attention down to the numbered

14:30:19 3 paragraph 5, you see where he writes, quote, At times I feel

14:30:27 4 that we are on an awesome use case but without an awesome

14:30:32 5 product yet, end quote. Do you see that?

14:30:34 6 A. Now, where was that?

14:30:35 7 Q. It's the last sentence of the numbered paragraph 5. Do

14:30:38 8 you see that, sir?

14:30:39 9 A. Numbered paragraph -- okay. I see -- well, on this page

14:30:42 10 or the next page?

14:30:43 11 Q. It's the first page, sir, numbered paragraph 5.

14:30:48 12 A. (Reviews document). Okay. Yes.

14:30:54 13 Q. Okay. And that's what he was telling you in 2012, right?

14:30:57 14 A. Correct. In an e-mail.

14:31:01 15 Q. Okay. Thank you.

14:31:02 16 A. Okay.

14:31:03 17 Q. You can set that aside, sir.

14:31:05 18 A. Okay.

14:31:05 19 Q. Mr. Katis, you have been the primary source of funds for

14:31:09 20 Voxer, correct?

14:31:11 21 A. That's correct.

14:31:12 22 Q. You have invested at least \$40 million in the company,

14:31:16 23 right?

14:31:17 24 A. As crazy as that sounds, that is the case.

14:31:20 25 Q. And that money came from almost \$100 million you were paid

14:31:23 1 from your work with the Triple Canopy company; is that correct?

14:31:29 2 A. It was probably closer to 80, but yeah.

14:31:31 3 Q. And Triple Canopy was the company you were describing in

14:31:34 4 the testimony you gave to your counsel, right?

14:31:36 5 A. That's correct.

14:31:37 6 Q. Now, Triple Canopy was not in the business of offering

14:31:42 7 messaging apps to the public, right?

14:31:44 8 A. Correct.

14:31:44 9 Q. All right. Instead, as you said, it was a private

14:31:47 10 security company, and it had merged with a successor entity to

14:31:52 11 Blackwater, right?

14:31:53 12 A. So eventually we did merge after Blackwater collapsed, and

14:32:00 13 then they were acquired by a group of individuals in Texas who

14:32:04 14 they basically turned them into a training business. They were

14:32:07 15 basically at that point a training site in North Carolina.

14:32:10 16 Q. Okay. Thank you, sir. And today you're the largest

14:32:14 17 shareholder in Voxer, right?

14:32:15 18 A. In Voxer, yes.

14:32:16 19 Q. And, as a shareholder, you have a financial interest in

14:32:19 20 the outcome of this litigation. Fair?

14:32:21 21 A. Yes.

14:32:22 22 MS. ANDERSON: All right. Pass the witness. Thank

14:32:24 23 you, sir.

14:32:25 24 THE COURT: Redirect, counsel?

14:32:29 25 MR. STONE: Yes, Your Honor.

14:32:33 1

REDIRECT EXAMINATION14:32:33 2 **BY MR. STONE:**14:32:33 3 Q. Now, Mr. Katis, do you recall some testimony that counsel
14:32:36 4 elicited about their not being licenses to the patents-in-suit?

14:32:41 5 A. Yes.

14:32:41 6 Q. And the patents-in-suit are the '557 and the '270 patent?

14:32:46 7 A. Yes.

14:32:47 8 Q. Voxer does have licenses to its live messaging technology?

14:32:51 9 A. Yes.

14:32:52 10 Q. Other than those patents?

14:32:53 11 A. Yes.

14:32:54 12 MS. ANDERSON: Objection, Your Honor: Leading.

14:32:56 13 THE COURT: Sustained. Don't lead the witness.

14:33:00 14 MR. STONE: Pardon me?

14:33:01 15 THE COURT: Don't lead the witness.

14:33:02 16 MR. STONE: Thank you, Your Honor.

14:33:04 17 Q. Do you recall your testimony about what Voxer didn't
14:33:07 18 invent?

14:33:08 19 A. What Voxer did not invent? Yes, I recall that testimony.

14:33:11 20 Q. Did you and Mr. Ranney and the other coinventors invent
14:33:15 21 the subject matter of the '270 patent?

14:33:18 22 A. Yes, we did.

14:33:19 23 Q. Did the patent office agree?

14:33:20 24 A. Yes, they did.

14:33:21 25 Q. And did those patents issue?

14:33:23 1 A. Yes, they did.

14:33:24 2 Q. And did you and Mr. Ranney and the other inventors invent

14:33:28 3 the subject matter of the '557 patent?

14:33:31 4 A. Yes, we did.

14:33:31 5 Q. And did the patent office agree?

14:33:33 6 A. Yes, they did.

14:33:34 7 Q. Now, there was a question about when Voxer contended

14:33:45 8 that -- that Facebook first became aware of the '270 patent.

14:33:49 9 Do you remember that?

14:33:50 10 A. Yes, sir. I remember that.

14:33:52 11 Q. And did you see that exhibit that they put up in front of

14:33:56 12 you?

14:33:56 13 A. Yes, I did.

14:33:57 14 MR. STONE: And could we pull up DTX305. And could

14:34:07 15 we pull up the page DTX305, page 36 of 100. It's not in

14:34:18 16 evidence.

14:34:19 17 Q. Do you have that document in front of you?

14:34:22 18 A. I have it in front me, yes.

14:34:24 19 Q. And what's the sentence before the sentence relating to

14:34:27 20 when Voxer contends Facebook was first aware of the '270

14:34:31 21 patent?

14:34:32 22 MS. ANDERSON: Objection, Your Honor: foundation.

14:34:34 23 This witness doesn't have the foundation for testifying to the

14:34:37 24 previous sentence.

14:34:39 25 MR. STONE: It's cross on the subsequent sentence,

14:34:41 1 Your Honor. I'm just adding this for completeness.

14:34:45 2 MS. ANDERSON: Your Honor, it is also hearsay.

14:34:47 3 They're admissions when taken on cross. But on direct these

14:34:51 4 are hearsay, and they lack foundation for this witness.

14:34:55 5 THE COURT: Counsel?

14:34:57 6 Q. (BY MR. STONE) Let me ask it this way: Did you have an

14:35:00 7 understanding that Facebook, in connection with your meetings

14:35:03 8 with them in 2012, was aware of the patents you had pending?

14:35:07 9 A. Yes.

14:35:08 10 Q. And what was that based on?

14:35:10 11 A. Facebook had an incredible ability to know everything

14:35:15 12 about everyone.

14:35:16 13 MS. ANDERSON: Objection, Your Honor: move to strike;

14:35:18 14 foundation.

14:35:18 15 MR. STONE: Let me ask it this way.

14:35:19 16 THE COURT: Sustained. The jury will disregard the

14:35:21 17 witness's last comment.

14:35:23 18 Now ask your question, Mr. Stone.

14:35:25 19 Q. (BY MR. STONE) Mr. Katis, did you tell Facebook about your

14:35:27 20 pending applications in connection with your 2012 meetings with

14:35:31 21 them?

14:35:31 22 A. Yes.

14:35:33 23 MR. STONE: Thank you, Your Honor. No further

14:35:35 24 questions.

14:35:36 25 THE COURT: Recross?

14:35:37 1 MS. ANDERSON: No further questions, Your Honor.

14:35:39 2 THE COURT: You may step down.

14:35:40 3 THE WITNESS: Thank you.

14:35:41 4 MR. STONE: Your Honor, we call Mr. Ranney. He's not

14:35:44 5 inside the courtroom, so I'll just need a break to go get him.

14:35:47 6 THE COURT: You may get him.

14:35:48 7 (Witness sworn)

14:37:16 8 **MATTHEW RANNEY,**

14:37:16 9 having been first duly sworn, testified as follows:

14:37:16 10 **DIRECT EXAMINATION**

14:37:16 11 **BY MR. STONE:**

14:37:16 12 Q. Good afternoon, sir.

14:37:19 13 A. Good afternoon.

14:37:20 14 Q. And could you please introduce yourself to the jury and

14:37:23 15 Court.

14:37:25 16 A. My name is Matthew Ranney.

14:37:27 17 Q. And where do you currently live?

14:37:29 18 A. In Pittsburgh, Pennsylvania.

14:37:31 19 Q. And if we could go back a few years and acquaint the jury

14:37:35 20 with how we got here, where did you go to college?

14:37:37 21 A. I went to Calvin University in Grand Rapids, Michigan.

14:37:42 22 Q. What did you study there?

14:37:43 23 A. Computer science.

14:37:44 24 Q. And did you receive a degree.

14:37:45 25 A. Yes. A bachelor of science and computer science in 1994.

14:37:48 1 Q. What kind of work did you do after college?

14:37:51 2 A. I worked on various networking projects.

14:37:54 3 Q. And when you say "networking," can you describe for the

14:37:58 4 jury what you mean.

14:37:59 5 A. Sure. So you know how there are mobile phones and there

14:38:03 6 are computers and with them you interact with systems and

14:38:07 7 services like TikTok or Twitter, and on the other end of those

14:38:12 8 services are other users on their mobile phones and computers.

14:38:16 9 Well, if you take all those devices and services together, we

14:38:19 10 call that "the network."

14:38:20 11 Q. And are you aware of any drawings that would describe such

14:38:23 12 a network?

14:38:24 13 A. Yes. In figure 1 of our patents.

14:38:27 14 MR. STONE: And if we could please pull up admitted

14:38:30 15 Exhibit 3.

14:38:32 16 Q. And, Mr. Ranney, do you recognize what we've put on the

14:38:35 17 screen here?

14:38:36 18 A. Yes. This is -- this is figure 1.

14:38:39 19 Q. And this is from which patent?

14:38:41 20 A. This is from the '270 patent.

14:38:43 21 Q. And what does this figure describe?

14:38:46 22 A. This describes a network like I had just mentioned.

14:38:52 23 Around the outside you can see the phones and the computers.

14:38:57 24 Those are the clients in the network. And in the middle you

14:39:00 25 can see the -- the servers, which is what we call, like, the

14:39:04 1 back end or the infrastructure of the network.

14:39:09 2 Q. And the work you did after college focused on what part of

14:39:12 3 the network?

14:39:13 4 A. So I spent most of my time working on the servers or the

14:39:16 5 back end of the network rather than the clients, although the

14:39:20 6 work is often interrelated. For example, one of the jobs I had

14:39:24 7 was for an Internet service provider in Silicon Valley doing

14:39:29 8 global Internet routing.

14:39:31 9 Q. Now, when did you begin working for Voxer?

14:39:34 10 A. In 2007.

14:39:35 11 Q. And what was your title?

14:39:37 12 A. I was cofounder and chief technology officer.

14:39:40 13 Q. And what were your responsibilities as chief technology

14:39:44 14 officer?

14:39:44 15 A. I was the main person figuring out how the technology

14:39:49 16 would work, how to actually get it built and, like, what kind

14:39:54 17 of devices it could run on, given the -- the state of

14:39:58 18 technology back then.

14:39:59 19 Q. Had you worked with Mr. Katis before you joined Voxer?

14:40:03 20 A. Yes. I first met Mr. Katis while working with him at

14:40:08 21 Triple Canopy, which is a defense -- or a government

14:40:13 22 contracting firm providing security services. A mutual friend

14:40:18 23 introduced us, and Tom was looking for someone with a

14:40:21 24 networking background.

14:40:22 25 Q. And what did you do at Triple Canopy?

14:40:25 1 A. So I was brought in to bring modern office IT
14:40:30 2 infrastructure to the Triple Canopy sites in Iraq. So there
14:40:36 3 was a -- there was a war going on there at the time, and so
14:40:40 4 they didn't have things like computers and printers and phones.
14:40:45 5 And so I worked to bring -- to bring those things to those
14:40:48 6 sites, and we connected them up with satellite Internet, which
14:40:53 7 didn't work very well.

14:40:54 8 Q. Now, when did you first begin -- when did you first begin
14:40:58 9 discussing the ideas behind what ultimately became Voxer with
14:41:02 10 Mr. Katis?

14:41:03 11 A. So Voxer officially started in 2007, but I was -- was
14:41:10 12 talking about these ideas with Tom Katis during our time
14:41:15 13 working together as Triple Canopy.

14:41:16 14 Q. And what do you recall about that?

14:41:18 15 A. So Tom related these.

14:41:23 16 MR. PAIGE: Objection, Your Honor: This is hearsay.

14:41:25 17 THE COURT: Overruled.

14:41:28 18 THE WITNESS: Should I proceed?

14:41:30 19 Q. (BY MR. STONE) Please.

14:41:30 20 A. Tom related how he had encountered some --

14:41:33 21 THE COURT: Now it's sustained. When he was saying
14:41:37 22 what Mr. Katis had done, it was not hearsay. When he says what
14:41:40 23 Mr. Katis said, it is hearsay.

14:41:42 24 MR. STONE: Thank you, Your Honor.

14:41:43 25 Q. So what is it that Mr. Katis had done that you understood?

14:41:48 1 A. Yes. He had run into some problems working with military
14:41:55 2 radios in Afghanistan. Military radios are fancy
14:41:59 3 walkie-talkies, and the problem is that you can only be on one
14:42:06 4 channel at a time. So if you are working with two different
14:42:09 5 teams on different channels and someone sends you a message
14:42:15 6 from -- you know, the other team on the channel you're not on,
14:42:19 7 you would miss that message. So, you know, we were just
14:42:22 8 talking about those limitations.

14:42:24 9 Q. And did you have ideas for overcoming those limitations?

14:42:28 10 A. Yes. Yeah. We talked about ways to -- to improve the
14:42:34 11 system, you know, ways to add -- to add buffering and
14:42:39 12 conversation management to -- you know, to a military radio
14:42:47 13 link.

14:42:47 14 Q. And were military radios the only applications you were
14:42:51 15 considering?

14:42:51 16 A. No. We -- we quickly realized that this technology had
14:42:55 17 application well beyond military radios, so we broadened the
14:43:00 18 idea.

14:43:01 19 Q. And what were the characteristics of this new, better
14:43:03 20 communication system you wanted to build?

14:43:06 21 A. Well, we knew we wanted it to be live like a phone call,
14:43:12 22 but also time-shifted like e-mail. And we knew users needed to
14:43:20 23 be able to manage multiple conversations, so we call that a
14:43:24 24 multiple conversation management system. And we knew it needed
14:43:29 25 to support all media types, so voice, video, text, images.

14:43:35 1 Q. And let's break that down a little bit. When you say live
14:43:39 2 and time-shifted, what do you mean by that?

14:43:42 3 A. Oh so live means -- it means like what you think, like
14:43:50 4 real time or as real time as the network will allow. And
14:43:54 5 time-shifted means listen to at some time later because it was
14:44:01 6 buffered or recorded.

14:44:02 7 Q. What was significant about the multiple conversation
14:44:05 8 management system?

14:44:06 9 A. So in order to -- you know, to be able to solve that
14:44:10 10 original problem, I mean, you need to be able to work with two
14:44:15 11 different groups at the same time. If someone on one
14:44:18 12 conversation or one channel, if you're communicating with them
14:44:22 13 while someone on the other conversation or channel sends you
14:44:25 14 something, you need to be able to hear that from the beginning
14:44:28 15 without missing it.

14:44:29 16 Q. And why were you interested in all these various forms of
14:44:33 17 communication media?

14:44:35 18 A. Well, we -- we knew we were building this kind of hybrid
14:44:40 19 communications system, and we saw voice, video, and text as --
14:44:46 20 as just very important components of this new hybrid system.

14:44:51 21 Q. Did you pursue the development of this system that had
14:44:55 22 these characteristics?

14:44:56 23 A. We did.

14:44:57 24 Q. What did you call this hybrid system?

14:44:59 25 A. We called it "store and stream" or "live messaging."

14:45:02 1 Q. What were you trying to convey with those names?

14:45:05 2 A. We were trying to describe this new hybrid communication

14:45:10 3 system that we were building.

14:45:11 4 Q. And, to your knowledge, did such a hybrid exist at the

14:45:14 5 time you started to build your system?

14:45:15 6 A. Based on the research we did and the patents we were

14:45:20 7 granted, no.

14:45:21 8 Q. Now, what steps did you take to build live messaging

14:45:24 9 technology at Voxer?

14:45:25 10 A. Well, several. We started a company. I joined Tom at the

14:45:31 11 this new company. We called it CommoTEK. And we started -- we

14:45:36 12 started researching the different ways, you know, the idea,

14:45:42 13 trying to get the idea into a form that we could develop. And

14:45:47 14 when we had the idea that made sense, we started to build the

14:45:52 15 team, and then we went to get patent protection.

14:45:59 16 Q. Did you have a number of brainstorming sessions with the

14:46:02 17 group?

14:46:02 18 A. Certainly.

14:46:04 19 MR. PAIGE: Objection, Your Honor: leading.

14:46:06 20 THE COURT: Overruled.

14:46:09 21 Proceed.

14:46:10 22 A. The research that I mentioned was largely conducted

14:46:14 23 through brainstorming sessions.

14:46:17 24 Q. And what was your role in connection with those

14:46:19 25 brainstorming sessions?

14:46:20 1 A. So my background in networking, particularly, you know,
14:46:27 2 for back-end systems, I knew about the different kinds of
14:46:33 3 systems that existed, the way -- the way those systems use the
14:46:37 4 network. And, you know, Tom knew about the challenges with --
14:46:42 5 with military radios. And so kind of together with those
14:46:45 6 two -- with our two backgrounds, we worked out an idea that
14:46:50 7 made sense.

14:46:50 8 Q. Let's pull up Exhibit P-827. And, Mr. Ranney, do you
14:46:58 9 recognize this?

14:46:58 10 A. Yes. This is an example of one of those brainstorming
14:47:03 11 sessions in Tom's apartment.

14:47:04 12 Q. And who is pictured in the photograph?

14:47:07 13 A. That's me on the left, and on the right is Jim Panttaja,
14:47:12 14 one of our earlier engineering hires.

14:47:15 15 Q. And where was this picture taken?

14:47:16 16 A. In Tom's apartment.

14:47:18 17 Q. Now, were there other members of the team besides yourself
14:47:22 18 and Mr. Panttaja and Mr. Katis?

14:47:25 19 A. Yes. On the early team was also Jim's wife Mary Panttaja
14:47:30 20 and Jim Rose.

14:47:31 21 Q. And what role did the Panttajas play?

14:47:34 22 A. They were -- they were husband and wife engineers. The
14:47:41 23 Panttajas, Tom and I, are named inventors on many of our
14:47:45 24 patents.

14:47:45 25 Q. What were the Panttajas' backgrounds?

14:47:48 1 A. Jim's background was in running engineering teams, and
14:47:52 2 Mary's background was in shipping products and user experience.
14:47:57 3 Q. And I believe you also mentioned Jim Rose. Who was
14:48:00 4 Mr. Rose?
14:48:01 5 A. He was Voxer's first patent counsel.
14:48:03 6 Q. What did he do?
14:48:05 7 A. He helped us understand the patent landscape and helped us
14:48:11 8 file for our patents.
14:48:13 9 Q. And why was it important to you that Voxer obtain patent
14:48:17 10 protection?
14:48:18 11 A. Well, we knew that the industry that we were moving into,
14:48:22 12 telecommunications, has a lot of strong existing patent
14:48:26 13 portfolios, and we needed to coexist with that. And we also
14:48:31 14 knew that the system that we were building was -- was unique,
14:48:35 15 and we wanted to protect it.
14:48:38 16 Q. What was first thing that you did as part of efforts to
14:48:41 17 get patent protection?
14:48:43 18 A. So we did a prior art search.
14:48:46 19 Q. And when you say "prior art," what are you referring to?
14:48:49 20 A. So prior art is like things that already exist in the
14:48:53 21 marketplace, things that have already been invented.
14:48:56 22 Q. And after investigating prior art, did Mr. Rose do
14:49:00 23 anything else?
14:49:01 24 A. Yes. He helped us get the ideas that were out of our
14:49:07 25 heads and into patent language so that we could file our

14:49:12 1 patents.

14:49:13 2 Q. When did Voxer release its first products?

14:49:17 3 A. So we -- we worked for some time since founding the

14:49:21 4 company building what you might call prototypes or beta

14:49:26 5 versions. But the first -- the first versions that we released

14:49:30 6 were in 2011. And after we released the iOS and the Android

14:49:37 7 version, that's when the -- you know, the product went viral.

14:49:40 8 Q. And have you prepared a timeline that shows some of the

14:49:44 9 dates?

14:49:44 10 A. I have.

14:49:45 11 Q. And if we could pull that up, please. And, Mr. Ranney,

14:49:55 12 what does this timeline show?

14:49:57 13 A. Well, you can see on May 2011, that's when the Voxer app

14:50:02 14 for iOS was released. iOS is what Apple calls their operating

14:50:09 15 system, so that just means iPhone. And in November 2011 is

14:50:13 16 when the Android version was released.

14:50:16 17 Q. And was that the first version of the Voxer app for

14:50:20 18 Android?

14:50:20 19 A. It was.

14:50:21 20 Q. And why did it take longer for the Voxer app for Android

14:50:25 21 to come out versus for iOS?

14:50:28 22 A. Yeah. So, unlike developing for iOS, there is -- there's

14:50:34 23 one company that makes iOS, which is Apple. There are many

14:50:41 24 companies that make Android devices, and they make lots of

14:50:45 25 different kinds of them, there are different flavors of

14:50:48 1 Android. So it took us a lot longer to get a version of Voxer
14:50:52 2 for Android that worked well enough on enough devices that we
14:50:55 3 could release it.

14:50:56 4 Q. And why did it take longer after -- or several years after
14:51:00 5 Voxer's founding before you released your first commercial
14:51:03 6 apps?

14:51:04 7 A. Sure. So if you -- if you think back to, you know, March
14:51:10 8 of 2007 when the company was founded, or even, you know, June
14:51:14 9 when the first provisional was filed, the world of mobile
14:51:19 10 phones was very, very different back then. Like there was no
14:51:22 11 iPhone, there was no Android. You know, people were using
14:51:27 12 Nokias and Blackberries if they had -- you know, if they had a
14:51:32 13 nice phone.

14:51:32 14 So it was not clear that iPhone or Android would
14:51:39 15 actually win, so we had initially targeted some other hardware
14:51:44 16 platforms. But, eventually, after -- after it became clear
14:51:47 17 that iPhone and Android were going to be the dominant platforms
14:51:52 18 for mobile phones, we put our energy there.

14:51:54 19 Q. And did working with those devices pose any unique
14:51:56 20 challenges?

14:52:01 21 A. Yes. So we had a couple of problems. First of all, we
14:52:05 22 thought that we could make one version of the app that would
14:52:07 23 work on both Android and iPhone, and that turned out not to
14:52:11 24 work very well. So we had to go back and do a native version
14:52:16 25 for both iPhone and native version for Android. And a big

14:52:22 1 reason to do that was it was the only way to get access to the
14:52:25 2 live audio components we needed for our live messaging.

14:52:30 3 Q. Now, what specific work were you doing at this time?

14:52:32 4 A. So I was working on the back end. I -- I wrote the first
14:52:37 5 couple of versions of the back-end computer code, you know, for
14:52:43 6 the server that saves the incoming media as it arrives and
14:52:47 7 makes it available for the clients whenever they want it.

14:52:51 8 Q. And when you say "back end," can you explain what you
14:52:54 9 meant by that?

14:52:54 10 A. Yeah. The servers that are on -- you know, in the network
14:52:59 11 diagram, the things in the middle, the servers relay all of
14:53:05 12 the -- all of the media between the -- between the clients. So
14:53:10 13 it -- you know, it had to be -- it had to be very fast because
14:53:14 14 it had to support millions of users at a time. And, yeah, so
14:53:19 15 that's why I focused there.

14:53:21 16 Q. Was scalability a factor that you considered?

14:53:24 17 A. Certainly. Scalability was incredibly important because
14:53:30 18 if we needed to be able -- like scalability is the ability to
14:53:35 19 easily expand a network system to support more load. It was
14:53:43 20 very important that we'd be able to easily expand our system as
14:53:48 21 new users came on as opposed to having to take it down and
14:53:50 22 rewrite it and then bring it back up again and then allow more
14:53:54 23 users on. So, yeah, it was very important to have a scalable
14:53:58 24 system.

14:53:58 25 Q. Was the Voxer network system scalable?

14:54:01 1 A. Indeed, it was. It went from very few users to millions
14:54:07 2 of users in a very short time, and we did that without
14:54:11 3 rewriting it. We just added -- added more computers.

14:54:15 4 Q. And when you say a short time, what time period are you
14:54:19 5 talking about?

14:54:19 6 A. Over a period of months.

14:54:22 7 Q. Now, what forms of communication did the 2011 Voxer app
14:54:27 8 work with?

14:54:28 9 A. It supported voice, text, and photos, and the voice could
14:54:34 10 be live or time-shifted.

14:54:35 11 Q. And did that Voxer app allow video?

14:54:38 12 A. It didn't. But the back end, I wrote that from the
14:54:43 13 beginning to support video or any media type.

14:54:47 14 Q. And why didn't it support video?

14:54:50 15 A. So -- so, again, if you look at that timeline and you
14:54:54 16 think about the kinds of iPhones and Androids that came out
14:55:00 17 around that time, they were not very powerful. And, indeed,
14:55:04 18 they were -- they were not powerful enough to support live
14:55:08 19 video. And the -- the developer access, in particular, I mean,
14:55:15 20 it was very hard as a developer to write a program that would
14:55:21 21 make use of live video with those early devices. And also the
14:55:25 22 bandwidth then was not what it is today.

14:55:27 23 Q. And what do you mean by bandwidth?

14:55:30 24 A. Bandwidth is a networking term. It means, like, how fast
14:55:36 25 can your network go.

14:55:37 1 Q. And so what was significant about bandwidth?

14:55:40 2 A. So the -- the bandwidth available, like the speed of the

14:55:43 3 networks in 2011 compared to now, the networks were really

14:55:51 4 slow, like, really slow. They could barely support live voice

14:55:55 5 over those data networks. They certainly couldn't support live

14:55:59 6 video.

14:56:00 7 Q. Now, we've heard Voxer referred to as walkie-talkie app.

14:56:03 8 Was there a reason for that?

14:56:05 9 A. Yeah. That was a name that resonated with our users, but

14:56:11 10 we always offered more than that. You know, it was always more

14:56:14 11 than a walkie-talkie or cellular PTT.

14:56:17 12 Q. And you just mentioned cellular PTT. What do you mean by

14:56:22 13 that?

14:56:22 14 A. Yeah. So PTT is push-to-talk. And so cellular PTT

14:56:28 15 systems, like Nextel is a popular one, they work like

14:56:33 16 walkie-talkies, only they happen to use the cellular network.

14:56:37 17 So you push the button on your phone, Your voice comes out the

14:56:42 18 speaker of another phone. And so walkie-talkie over cellular.

14:56:46 19 Q. And why wasn't Voxer like that?

14:56:47 20 A. Well, because in a walkie-talkie you could miss a message,

14:56:51 21 and in Voxer you could always play a message again. You can be

14:56:55 22 on more than one channel at a time. You can have more than one

14:56:59 23 conversation going on at a time with Voxer. And there are

14:57:04 24 multiple media types, so you could have voice, photos, and

14:57:08 25 texts.

14:57:08 1 Q. Let me show you now what's been admitted as plaintiff's
14:57:11 2 Exhibit P-5. Mr. Ranney, do you recognize this?

14:57:17 3 A. Yes. This is our first provisional patent application.

14:57:21 4 Q. And when was that filed?

14:57:23 5 A. You can see on the time stamp there that is June of 2007.

14:57:27 6 Q. And what did you intend that to cover?

14:57:30 7 A. We intended this to cover the full scope of the invention,
14:57:37 8 of our -- of our live messaging with all of the -- all of the
14:57:43 9 media types we could think of.

14:57:44 10 Q. And is that described in the provisional?

14:57:47 11 A. It is.

14:57:47 12 Q. And if we could direct your attention, please, to page
14:57:50 13 P5-4, and what are you describing here, sir.

14:57:55 14 A. Sure. So this -- this talks about -- you know, this is,
14:58:00 15 you know, more details of the system here. And Point Number 1
14:58:08 16 talks about the multiple conversation management system, right?

14:58:12 17 And then Points 2 and 3 are the store and stream, you know,
14:58:18 18 that we talked about before. So you can -- you can manage
14:58:22 19 multiple conversations. You can -- you can interact with them
14:58:27 20 in either a live or time-shifted mode.

14:58:29 21 Q. Now, was there another provisional patent application?

14:58:32 22 A. There was.

14:58:33 23 MR. STONE: And if we could please pull up admitted
14:58:35 24 Exhibit P-6.

14:58:40 25 Q. Mr. Ranney, do you recognize this?

14:58:41 1 A. Yes. This is our second provisional application.

14:58:45 2 Q. And when was this filed?

14:58:47 3 A. In October of 2007.

14:58:49 4 Q. And are the Panttajas also named inventors on this

14:58:53 5 document?

14:58:53 6 A. They are, along with myself and Tom Katis.

14:58:57 7 Q. Now, what did you intend to cover with the second

14:59:01 8 provisional?

14:59:03 9 A. This goes into more detail about -- about the system, and

14:59:08 10 it talks about the -- the use cases and target markets.

14:59:13 11 Q. And if we could turn, please, to page 610.

14:59:20 12 And what are you describing here in Point Number 1

14:59:25 13 under to RebelVox system?

14:59:28 14 A. Right. And RebelVox is also another name for the company.

14:59:33 15 The conversation management system that works in the

14:59:37 16 audio, video, voice or other media. That's the multiple

14:59:43 17 conversation management system that I mentioned before.

14:59:45 18 Q. And there's a reference to TiVo. What's the reference to

14:59:50 19 that?

14:59:50 20 A. So TiVo is what -- like, if you don't remember, it's what

14:59:54 21 we now think of as digital video recorder or DVR. It's an

15:00:00 22 example of an early time-shifting system, a reference we were

15:00:06 23 using just to help people understand what we are talking about.

15:00:10 24 So TiVo is a -- it's a device you put in your -- you know, on

15:00:15 25 your live TV feed. You have live TV on one side, you have TiVo

15:00:19 1 on the other side, and you can do a little bit of time-shifted
15:00:22 2 TV consumption. But it's a one-way device, and there's no
15:00:28 3 interactivity with it. And it's a single device by itself on
15:00:31 4 your -- on your home. But it was just to help people
15:00:35 5 understand what time-shifting meant.

15:00:36 6 Q. And also trying to -- you were trying to describe that it
15:00:40 7 could also have application to recording of live, two-way
15:00:44 8 communications?

15:00:45 9 A. That's -- I mean, TiVo does not allow two-way
15:00:49 10 communications, but the multiple conversation management system
15:00:53 11 certainly does.

15:00:54 12 Q. And so if we could now direct your attention to the page
15:00:58 13 bearing 6-13 -- Exhibit 6-13.

15:01:02 14 And what are you describing here, sir?

15:01:04 15 A. These are some of the target markets that -- you know,
15:01:10 16 where this technology could be useful: business communications,
15:01:14 17 social networks, media industries like broadcasting.

15:01:17 18 Q. And what were you envisioning at the time in the
15:01:21 19 broadcasting context?

15:01:23 20 A. Well, if you think about a live message, there could be a
15:01:27 21 live video, and maybe it's a really long message. But also
15:01:34 22 that, you know, users could interact with it in a time-shifted
15:01:38 23 or live mode, but also be able to send things back the other
15:01:42 24 direction. It could be an interactive video experience.

15:01:45 25 Q. And what did you envision in the context of public and

15:01:49 1 social networks?

15:01:50 2 A. So social network is generally a series of conversations

15:01:59 3 that people interact with, and there are multiple media types

15:02:02 4 in those conversations, in those conversations threads. And,

15:02:08 5 you know, we can apply this technology to -- to that, you know,

15:02:13 6 multiple conversation system and add our multiple media types,

15:02:18 7 time-shifted or live, to that.

15:02:21 8 MR. STONE: Your Honor, I'm not sure when you're

15:02:23 9 going take an afternoon break.

15:02:23 10 THE COURT: We're going to take an afternoon break in

15:02:26 11 a little bit, but not quite now.

15:02:27 12 MR. STONE: Okay.

15:02:28 13 Q. Mr. Ranney, is the concept of the multiple conversation

15:02:32 14 management system reflected in your patent?

15:02:34 15 A. Yes.

15:02:35 16 Q. And are you a named inventor on any Voxer patents?

15:02:38 17 A. Yes. I am a named inventor on over 150 Voxer patents

15:02:42 18 related to live messaging.

15:02:44 19 Q. And are you familiar with the patents being asserted in

15:02:47 20 this case?

15:02:48 21 A. Yes.

15:02:48 22 Q. Which ones are they?

15:02:49 23 A. The '270 patent and the '557 patent.

15:02:53 24 Q. And are those patents related to the provisional we just

15:02:57 25 discussed?

15:02:58 1 A. Yes. They build on the provisional.

15:03:00 2 MR. STONE: And let's pull up Plaintiff's P-3.

15:03:03 3 Q. Mr. Ranney, do you recognize this?

15:03:06 4 A. Yes. This is the '270 patent.

15:03:09 5 Q. Are you a named inventor?

15:03:10 6 A. I am, along with Tom Katis, Jim Panttaja and

15:03:14 7 Mary Panttaja.

15:03:14 8 Q. And do you understand what claims of the '270 patent Voxer

15:03:17 9 is asserting here today?

15:03:19 10 A. There are four of them. I forget the numbers.

15:03:22 11 Q. Is this the patent that we were looking at earlier that

15:03:25 12 contained figure 1?

15:03:26 13 A. Yes.

15:03:27 14 Q. And is that on sheet 1 of 33 of this patent?

15:03:30 15 A. I believe so, yes. Yes. There it is.

15:03:32 16 Q. Now, did you assist in preparing the figures that are

15:03:36 17 found in the patent?

15:03:37 18 A. Yes.

15:03:38 19 Q. And what about the specification of the patent? Did you

15:03:43 20 assist in preparing that?

15:03:44 21 A. I -- I did, along with the other inventors and our patent

15:03:49 22 counsel.

15:03:52 23 Q. Now, let me direct your attention to P-3, 43 at column 4,

15:03:57 24 please. And what's described there, sir?

15:04:00 25 A. This is the summary of the invention.

15:04:03 1 Q. And what were you trying to describe?

15:04:06 2 A. A, you know, multiple conversation management using --

15:04:12 3 using multiple media types with, you know, live or time-shifted

15:04:18 4 interaction models.

15:04:19 5 Q. Live messaging?

15:04:21 6 A. Live messaging.

15:04:22 7 Q. Now, let's turn to column 8 of the '270 patent at P-3, 45.

15:04:28 8 Do you recognize this?

15:04:30 9 A. Yes. This is part of the specification.

15:04:34 10 Q. And is the multiple conversation management system

15:04:36 11 defined?

15:04:37 12 A. It is.

15:04:39 13 Q. And how is that defined?

15:04:41 14 A. Yes. So reading from the text here, it is "An application

15:04:46 15 that runs as part of a client application which enables a user

15:04:50 16 to engage in multiple conversations using a variety of media

15:04:54 17 types."

15:04:55 18 Q. And is "media" defined?

15:04:57 19 A. It is.

15:04:58 20 Q. And how is that defined?

15:05:00 21 A. It says reading -- sorry -- audio, video, text position,

15:05:06 22 and other -- you know, other data types.

15:05:09 23 Q. So audio and video?

15:05:11 24 A. Audio and video and texts are the main ones, but we

15:05:15 25 imagined using it for other things as well.

15:05:18 1 Q. And are "conversations" defined?

15:05:20 2 A. They are.

15:05:20 3 Q. And how are they defined?

15:05:22 4 A. As a thread of messages, you know, that you can engage in

15:05:26 5 a real-time or time-shifted mode.

15:05:29 6 Q. Now, is there another patent being asserted in this case?

15:05:32 7 A. There is. The '557 patent.

15:05:34 8 MR. STONE: And if we could please pull that up,

15:05:36 9 please, Mike.

15:05:38 10 Q. Mr. Ranney, do you recognize this?

15:05:40 11 A. Yes. This is the '557 patent.

15:05:43 12 Q. And are you a named inventor on this patent as well?

15:05:46 13 A. I am, along with Tom Katis, Jim Pantaja and

15:05:49 14 Mary Pantaja.

15:05:50 15 Q. And do you have an understanding as to what claims are

15:05:54 16 being asserted?

15:05:55 17 A. Yes. Claims 1 and 9.

15:05:57 18 Q. Now, is the multiple conversation management system

15:06:00 19 reflected in this patent as well?

15:06:02 20 A. It is.

15:06:04 21 Q. And if we could turn to page P-4, 45, do you recognize

15:06:11 22 that?

15:06:11 23 A. Yes. This is the -- the same definition from the '270

15:06:16 24 patent.

15:06:17 25 Q. And does this patent also contain a similar summary of

15:06:21 1 invention?

15:06:21 2 A. It does. The patents share a common spec.

15:06:24 3 Q. Now, Mr. Ranney, did there ever come a time when you came

15:06:28 4 to discuss your technology and patents with Facebook?

15:06:32 5 A. Yes. There were two times that I can recall, but others

15:06:39 6 at Voxer, especially Tom Katis, met with them more frequently.

15:06:44 7 Q. And does your timeline reflect the meetings that you

15:06:48 8 attended?

15:06:48 9 A. It does.

15:06:51 10 Q. When was the first meeting you attended?

15:06:54 11 A. So the first one is there on August 17 of 2010.

15:06:57 12 Q. And who attended that meeting?

15:06:59 13 A. From Voxer, it was me, Tom Katis, and Gustaf Alstromer.

15:07:06 14 And from Facebook it was Chamath Palihapitiya, who is VP of

15:07:14 15 growth, and Matt Papakipos, who was engineering director at

15:07:18 16 Facebook.

15:07:18 17 Q. Now, without going into who said what about the meeting,

15:07:22 18 what do you recall about the meeting?

15:07:24 19 A. So it was a very preliminary meeting. We -- Tom and I did

15:07:29 20 what we always do at those meetings, which is he talks about,

15:07:35 21 you know, the origin story, you know, Afghanistan, and then he

15:07:40 22 discusses the patent strategy. And at the time we had only

15:07:46 23 patent applications. They weren't granted yet, but we

15:07:50 24 discussed those.

15:07:51 25 And then my role was I got into explaining the

15:07:57 1 technology. So I would usually draw a diagram on the white
15:08:01 2 board and explain how technology works.

15:08:03 3 Q. And did you provide a demo at this meeting?

15:08:06 4 A. We did, yep.

15:08:07 5 Q. And what did the demo entail?

15:08:10 6 A. We demonstrated live messaging between a few devices that
15:08:15 7 we brought.

15:08:16 8 Q. And do you recall anything about the reaction that the
15:08:19 9 Facebook attendees had to that demo?

15:08:22 10 A. Yeah. Their VP definitely gave us a hard time about the
15:08:27 11 clunky new user experience. But once we got -- you know, once
15:08:31 12 the devices were signed in, the live messaging part worked
15:08:37 13 perfectly.

15:08:37 14 MR. STONE: And if we would please pull up admitted
15:08:40 15 Exhibit P-752.

15:08:43 16 Q. Mr. Ranney, do you recognize this?

15:08:45 17 A. Yes. This is a Voxer internal e-mail summarizing the
15:08:54 18 meeting that I just talked about.

15:08:56 19 Q. And is the e-mail consistent with your recollection of
15:08:59 20 that meeting?

15:08:59 21 A. It is.

15:09:00 22 Q. And did it -- do you recall that the Facebook VP mentioned
15:09:07 23 that the technology was "so cool"?

15:09:10 24 A. Yes. That, and they were very interested in how we made
15:09:16 25 it so fast.

15:09:17 1 Q. When did you next meet with Facebook?

15:09:22 2 A. So in 2011, when our -- when our app went viral, we

15:09:31 3 started to get a lot of attention from a lot of different tech

15:09:36 4 companies and Google and Facebook. And Tom had met with them a

15:09:41 5 couple of times, and they requested that I come and do a more

15:09:46 6 technical conversation.

15:09:48 7 Q. And when --

15:09:49 8 A. So yeah. It's on the timeline.

15:09:51 9 Q. I was just going to ask you if it's on your timeline.

15:09:54 10 When did that meeting take place?

15:09:56 11 A. Right. So you can see there are a few meetings up there.

15:10:01 12 The one that I attended was on March 6, 2012.

15:10:06 13 Q. And where did that meeting take place?

15:10:09 14 A. That was at Facebook in Menlo Park.

15:10:13 15 Q. And who was present from Voxer?

15:10:15 16 A. So, from Voxer, it was me and Tom Katis.

15:10:18 17 Q. And who was present from Facebook?

15:10:21 18 A. So the -- the two names that I remember are Chris Daniels

15:10:27 19 an Peter Deng, but there were other engineers and product

15:10:31 20 people whose names I don't recall.

15:10:33 21 Q. And what was your role at the meeting?

15:10:36 22 A. So it started -- you know, we started it the same way that

15:10:41 23 we always did, like we did the previous one, and I answered a

15:10:44 24 lot of technical questions, you know, focused on scalability in

15:10:51 25 particular. They were very interested to hear whether the

15:10:55 1 architecture was scalable.

15:10:56 2 Q. Were there other technical questions that they had?

15:10:59 3 A. Yeah. They were -- they were interested, you know,

15:11:05 4 whether we could support voice, whether we could support video,

15:11:10 5 whether we could do it all at Facebook's scale.

15:11:13 6 Q. And what did you tell them about that?

15:11:15 7 A. So on the scale part, I mean, we had scaled it this far.

15:11:21 8 I'm sure we could scale it quite a bit further. And on the --

15:11:26 9 the voice part, yes, we support voice. On the video part, I

15:11:30 10 told them, you know, what I said before, which is the back end

15:11:35 11 already supports video, but the -- the phones, they don't -- we

15:11:40 12 can't do live video on the mobile phones very well yet.

15:11:44 13 Q. Were there questions about the speed of Voxer's

15:11:47 14 technology?

15:11:48 15 A. Yeah. Definitely. They were very impressed with how fast

15:11:55 16 it was, and I -- I told them that was because of our store and

15:11:58 17 stream technology, where we could -- you know, where a user

15:12:02 18 could start sending a message, maybe even without a network

15:12:06 19 connection, and then the receiver can listen to it whenever

15:12:09 20 they want. And that makes the system seem very fast to both

15:12:14 21 the sender and the receiver.

15:12:16 22 Q. Did you ever understand that Voxer -- or strike that.

15:12:19 23 Did you ever understand that Facebook was considering

15:12:22 24 building a version of Voxer internally?

15:12:24 25 A. No.

15:12:25 1 Q. Now, how did you leave this meeting with Facebook?

15:12:31 2 A. Like how -- like what was the last thing that we said

15:12:37 3 during the meeting?

15:12:38 4 Q. That you can recall.

15:12:39 5 A. Yeah. Let's see. What was the last thing? They were --

15:12:45 6 yeah. They were -- we were interested in having them

15:12:49 7 license -- license the technology. And, yeah, that was -- that

15:12:54 8 was where we left it.

15:12:55 9 Q. And was Voxer excited about that prospect?

15:12:59 10 A. Yeah. That's what we were -- what we were trying to do.

15:13:03 11 Q. Now, when did you next hear about interactions with

15:13:07 12 Facebook?

15:13:07 13 A. Well, shortly thereafter, I -- I learned that Facebook was

15:13:11 14 not interested in licensing our technology.

15:13:14 15 Q. And what was your reaction to that?

15:13:16 16 A. I was surprised, because they seemed so interested and

15:13:24 17 impressed with how well it worked.

15:13:26 18 Q. Now, as of March 2012, did Voxer allow for live voice

15:13:33 19 messaging?

15:13:33 20 A. It did. Voice could be live or time-shifted.

15:13:36 21 Q. Did Facebook Messenger?

15:13:38 22 A. No.

15:13:39 23 Q. Now, what was your next interaction with Facebook?

15:13:42 24 A. Well, you know, late in 2012 we started to have some

15:13:52 25 mysterious outages with our integration with Facebook.

15:13:56 1 Q. And what were those mysterious outages?

15:14:00 2 A. When we were -- when we were using the sign in with

15:14:03 3 Facebook functionality, and it often didn't work.

15:14:10 4 Q. And when you say "sign in with Facebook functionality"

15:14:13 5 what are you referring?

15:14:15 6 A. So you've probably seen how -- how in some apps that

15:14:18 7 aren't Facebook, there's a button that says "sign in with

15:14:23 8 Facebook." And we put that button in our app. Facebook

15:14:26 9 encouraged a lot of people to integrate with that, so we were

15:14:30 10 one of the app developers who did. And, you know, people like

15:14:36 11 it. It makes it easy for them. But a lot of times we found

15:14:39 12 that it didn't work.

15:14:41 13 MR. PAIGE: Objection, Your Honor: Motion in Limine

15:14:43 14 Number 3.

15:14:45 15 MR. STONE: I think that goes to something that

15:14:47 16 happened later, Your Honor.

15:14:49 17 THE COURT: Ladies and gentlemen, at this time we'll

15:14:52 18 take our afternoon recess. We'll be in recess for 15 minutes.

18:00:00 19 (Jury recessed)

15:15:30 20 THE COURT: All right. Please be seated.

15:15:42 21 Let me hear your objection.

15:15:45 22 MR. PAIGE: Your Honor, it sounds like they are

15:15:50 23 starting to talk about some sort of unfair competition or

15:15:53 24 something of that sort on the part of Facebook.

15:15:55 25 MR. STONE: Do you want the witness here for this,

15:15:58 1 Your Honor?

15:15:58 2 THE COURT: I don't care if the witness is here or
15:16:00 3 not.

15:16:00 4 MR. STONE: So, Your Honor, during the fall of 2012,
15:16:06 5 Voxer did experience some mysterious outages with respect to
15:16:11 6 Facebook Connect. This is not when they got cut off from the
15:16:15 7 Find Friends API in January of 2013, where Facebook said you're
15:16:20 8 a competitor. This is just a situation where they experienced
15:16:23 9 some mysterious outages in the lead-up in the fall of 2012.

15:16:27 10 So I'm not going to ask him, Did you get cut off from
15:16:30 11 Facebook Find Friends? Did they cut you off from the API? I
15:16:34 12 was actually almost at the end of this inquiry.

15:16:36 13 THE COURT: Then I'll let you finish this limited
15:16:39 14 inquiry.

15:16:40 15 MR. STONE: Thank you, Your Honor.

15:16:40 16 THE COURT: All right. We'll be in recess until a
15:16:42 17 little after 3:30.

15:16:44 18 MR. VAN NEST: Your Honor, excuse me. I think we're
15:16:46 19 about to finish with Mr. Ranney here after the cross, and I
15:16:49 20 think the next witness up is Dr. Mitzenmacher. And I have some
15:16:55 21 issues I'd like to take up with the Court before he gets on the
15:16:59 22 stand, and I can do it whenever the Court pleases, but I
15:17:01 23 thought I'd alert the Court.

15:17:02 24 THE COURT: How long do you anticipate this cross
15:17:05 25 being?

15:17:07 1 MR. PAIGE: Fifteen minutes or so, Your Honor.

15:17:11 2 THE COURT: All right. Then let me take up your

15:17:13 3 issues right now.

15:17:15 4 MR. VAN NEST: Okay.

15:17:16 5 THE COURT: Please be seated.

15:17:20 6 MR. VAN NEST: Your Honor, Dr. Mitzenmacher, as you

15:17:22 7 heard this morning, is their technical witness on infringement.

15:17:27 8 And we learned in looking at the slides that he intends to

15:17:37 9 express a position infringement that Voxer disclaimed in the

15:17:39 10 IPR proceedings. We've always known that this has to do with

15:17:43 11 the '557 patent, and Your Honor heard the openings this

15:17:49 12 morning. The debate is whether selection and measurement is

15:17:53 13 done by the servers or on the client. And we've always

15:17:58 14 understood that Dr. Mitzenmacher was going to express the

15:18:02 15 opinion that Facebook Live and Instagram Live did it on the

15:18:06 16 servers and as part of the server system at Facebook.

15:18:12 17 We now learn, looking at the slides, that he intends

15:18:15 18 to offer a second alternative opinion that, even if the client

15:18:20 19 performs the measurement and the selection, that's

15:18:25 20 infringement. Now, in the IPR in which Voxer and Facebook were

15:18:35 21 engaged, they said in order to avoid prior art, the claimed

15:18:39 22 video message infrastructure must actively participate in

15:18:44 23 analyzing bandwidth and selecting video message bits and,

15:18:48 24 further, that Claim 1 requires --

15:18:51 25 THE COURT: Well, let me interrupt you right here.

15:18:54 1 MR. VAN NEST: Yes, sir.

15:18:55 2 THE COURT: You say you discovered this by looking at

15:18:58 3 the slides that --

15:18:58 4 Is it Dr. Mitzenmacher?

15:19:00 5 MR. VAN NEST: It is.

15:19:00 6 THE COURT: -- is going to testify from. He will not

15:19:06 7 be allowed to testify as to anything that is not in his report

15:19:09 8 that you had access to. So did he or did he not in his report

15:19:15 9 address the points that you're telling me are in the slides?

15:19:19 10 MR. VAN NEST: He didn't address this point directly.

15:19:22 11 He does have in his report an opinion that there is divided

15:19:27 12 infringement, which is a little bit different.

15:19:30 13 In his report he says the mere fact that the client

15:19:35 14 device is doing it doesn't constitutes divided infringement.

15:19:41 15 But that's different from saying you can infringe if the

15:19:47 16 Facebook has the client device doing the whole thing, both the

15:19:50 17 measurement and the bandwidth. So it's quite different than

15:19:53 18 what he had in his report, and it runs right in face of what

15:19:57 19 they told the patent office Claim 1 required.

15:20:00 20 THE COURT: I'm not worried about that.

15:20:02 21 Counsel?

15:20:03 22 MR. STAKE: Your Honor, we strenuously disagree with

15:20:05 23 this argument.

15:20:06 24 THE COURT: Let me ask you so we have the record

15:20:07 25 right, there are a lot of lawyers, state your name so if this

15:20:11 1 finds its way to Washington, the Circuit will know who spoke at
15:20:13 2 any given moment during the trial.

15:20:16 3 MR. STAKE: Sam Stake on behalf of Voxer, Your Honor.

15:20:18 4 THE COURT: All right. Now tell me.

15:20:20 5 MR. STAKE: We strenuously disagree on several
15:20:22 6 counts. This argument has been waived. It's also baseless at
15:20:27 7 the bottom. Contrary --

15:20:29 8 THE COURT: Well, waiving it and being baseless are
15:20:32 9 two different things.

15:20:33 10 MR. STAKE: Agreed, Your Honor. And contrary to
15:20:39 11 Mr. Van Nest's argument, Dr. Mitzenmacher fully disclosed these
15:20:42 12 positions in his report last August of 2021.

15:20:45 13 THE COURT: I'm not talking about whether he fully
15:20:47 14 described his position. Is it disclosed in the report that he
15:20:53 15 will render an opinion on this subject?

15:20:57 16 MR. STAKE: Yes, Your Honor.

15:20:58 17 THE COURT: Mr. Van Nest?

15:21:00 18 MR. VAN NEST: Again, I disagree. There's two
15:21:02 19 issues. One is he's got a divided infringement opinion, but
15:21:07 20 divided infringement is not an issue in the case. He doesn't
15:21:12 21 have the opinion in his report that, if the only activity on
15:21:17 22 selection and bandwidth occurs in the client device, that's
15:21:20 23 infringement. He doesn't have that in the report. He has a
15:21:24 24 divided infringement opinion, but divided infringement is not
15:21:28 25 an issue now.

15:21:29 1 THE COURT: So what conclusion do you intend to try
15:21:35 2 to elicit from Dr. Mitzenmacher in this area that Mr. Van Nest
15:21:40 3 is complaining about.

15:21:42 4 MR. STAKE: Your Honor, Dr. Mitzenmacher will opine
15:21:44 5 that there is a selection performed by the client and that
15:21:48 6 there is a selection performed by the server. And he has both
15:21:52 7 of these theories. I could read directly from his report.

15:21:55 8 THE COURT: Please do.

15:21:57 9 MR. STAKE: Okay. The paragraph 616 and 621 of his
15:22:02 10 report, this is where he's opined that Facebook servers will
15:22:08 11 select the corresponding video segment data from among various
15:22:12 12 transcoded versions of the video segment.

15:22:14 13 That's -- I believe that's a theory that's not
15:22:17 14 disputed as disclosed. The second theory states, in
15:22:20 15 particular --

15:22:20 16 MR. VAN NEST: Where are you reading, Counsel?

15:22:22 17 MR. STAKE: Oh. Paragraph 622. It states, in
15:22:28 18 particular: Facebook controls and directs client devices to
15:22:32 19 perform bandwidth estimation and then requests a particular
15:22:36 20 bitrate version of a Facebook Live or Instagram Live stream to
15:22:41 21 download. And that's the client's opinion, Your Honor.

15:22:44 22 MR. VAN NEST: Your Honor, that's what I'm saying is
15:22:46 23 part of the divided infringement opinion which is no longer in
15:22:50 24 the case. That's what I'm saying.

15:22:52 25 THE COURT: Well, wait a minute. You say it's no

15:22:54 1 longer in the case. If the plaintiffs intend to try to elicit
15:22:59 2 that testimony, it sounds like they disagree that it's no
15:23:05 3 longer in the case.

15:23:07 4 MR. STAKE: Your Honor, I would argue that this is
15:23:07 5 fodder for cross-examination, if anything.

15:23:10 6 MR. VAN NEST: It --

15:23:11 7 THE COURT: No. You're -- you're jumping around.

15:23:18 8 Dr. Mitzenmacher disclosed this in his opinion.

15:23:23 9 Mr. Van Nest, you-all have had his opinion. I'm not going to
15:23:26 10 allow him to testify beyond his opinion or elaborate beyond his
15:23:31 11 opinion, but I am going to allow him to testify as to what was
15:23:34 12 in his opinion that was provided to you earlier. No more than
15:23:40 13 that. Do you understand that, Counsel?

15:23:43 14 MR. STAKE: Thank you, Your Honor.

15:23:44 15 THE COURT: And make sure he understands where the
15:23:46 16 fence comes around.

15:23:47 17 MR. VAN NEST: Your Honor, there are two other much
15:23:49 18 shorter issues that are similar. But these --

15:23:53 19 THE COURT: I am always concerned when a lawyer uses
15:23:57 20 the word "shorter." Now, I used to do that, too, but I've been
15:24:01 21 on the bench a long time and I understood where I was wrong
15:24:04 22 when I was on your side of the bench.

15:24:09 23 Take a shot at it.

15:24:11 24 MR. VAN NEST: Issue one, he has a series of exhibits
15:24:14 25 with source code which he intends to display. He never

15:24:20 1 identified that code specifically in his opinion as something
15:24:23 2 he was relying on.

15:24:24 3 He did have an appendix with thousands of lines of
15:24:28 4 code, but there's no discussion of these lines of codes
15:24:32 5 supporting any particular opinion in his report. So that's
15:24:36 6 issue one.

15:24:38 7 THE COURT: All right. Stop right there.

15:24:39 8 MR. STAKE: Your Honor, we disagree that he --
15:24:43 9 Dr. Mitzenmacher has failed to disclose this code. He has
15:24:47 10 provided the code file names in his expert report, and he's
15:24:51 11 described the functions in that code. He hasn't copied all the
15:24:55 12 code, but they come from three very, very short file -- files
15:24:59 13 that were requested by Voxer. One is one page, one was two
15:25:02 14 pages, and one was four pages. He didn't copy all of that code
15:25:06 15 into his report, but he'll be pulling a small snippet of each
15:25:11 16 of those small files and displaying those into a demonstrative.

15:25:18 17 Now, I think it's notable that the functions he
15:25:21 18 describes there, it's not disputed is my understanding that
15:25:25 19 he's described those functions accurately. This is Facebook
15:25:29 20 code.

15:25:29 21 MR. VAN NEST: But he never -- he never in the report
15:25:32 22 discloses as to those functions or any others that this
15:25:35 23 particular code is what he's relying on. That's my -- he's
15:25:39 24 trying to dress up this opinion as something better than it is
15:25:43 25 by now attaching source code to it, which he never did in the

15:25:47 1 report.

15:25:47 2 THE COURT: You will be allowed to thoroughly
15:25:49 3 cross-examine on whether he provided you with that information
15:25:52 4 ahead of time, but I'm going to allow him to testify as to what
15:25:56 5 he relied on.

15:25:57 6 Now, something I need to bring up since you-all
15:26:01 7 didn't start out in my court. You came down the road from
15:26:07 8 Waco, and I want to make sure because I didn't take this up
15:26:10 9 sooner and I don't think that I understood this was happening
15:26:14 10 before. Some judges, and I believe my colleague in Waco is
15:26:18 11 one, allows demonstrative exhibits to go to the jury room. In
15:26:22 12 my court demonstrative exhibits do not go to the jury room.

15:26:26 13 So, if he's using this as demonstrative, you may
15:26:29 14 cross-examine him on it, but it's not to be considered as
15:26:32 15 evidence and it will not go to the jury room.

15:26:34 16 MR. VAN NEST: Fine, Your Honor.

15:26:37 17 THE COURT: Try number three on me.

15:26:39 18 MR. STAKE: Your Honor, on that note we've come to
15:26:42 19 appreciate Your Honor's procedures. And in this vein we do
15:26:45 20 have three exhibits that we understand are not objected to on
15:26:50 21 their admission. Would Your Honor be amenable to those being
15:26:54 22 admitted now, perhaps, or how would Your Honor like to do that?

15:26:57 23 THE COURT: Whatever is easiest, but I want to finish
15:26:59 24 with Mr. Van Nest. He says he's got one left that we're all
15:27:05 25 hopeful is shorter than even the last one. But he was honest

15:27:09 1 about that one. That was not long. So give me the third one,
15:27:12 2 and then we'll go to the exhibit situation.

15:27:14 3 MR. VAN NEST: He intends to make an argument about
15:27:18 4 what Claim 1 of the '557 patent requires that he never made in
15:27:26 5 his report. And I can take that on the fly if you wish,
15:27:30 6 Your Honor, but he's making an argument about what the claim
15:27:33 7 requires in Slide 84 of his deck that was never made in the
15:27:39 8 report.

15:27:40 9 MR. STAKE: Your Honor, as I just explained, he has
15:27:43 10 offered both of these opinions. He'll be bound by that. In
15:27:46 11 fact, it's -- respectfully, it's an argument that will respond
15:27:52 12 directly to Mr. Van Nest's opening argument, an argument that
15:27:56 13 Mr. Van Nest made about claim language.

15:27:59 14 THE COURT: It doesn't matter what argument he made.
15:28:02 15 When we're dealing with an expert, it is -- he doesn't get to
15:28:05 16 go outside his report. No matter what Mr. Van Nest said in his
15:28:10 17 opening statement or whatever he said to the jury, that doesn't
15:28:13 18 alter the parameters of what we use expert reports for.

15:28:16 19 So the question is: Address exactly what
15:28:21 20 Mr. Van Nest said, and is that included in the report?

15:28:24 21 MR. STAKE: Yes, Your Honor. Dr. Mitzenmacher will
15:28:28 22 be opining that the client's device performs the selection, and
15:28:34 23 he will be -- in providing that opinion, he needs to be able to
15:28:40 24 explain that that's consistent with the claim language. That's
15:28:44 25 exactly what he's done in his report and what he will be doing

15:28:48 1 today.

15:28:48 2 MR. VAN NEST: That's the second part of that where
15:28:50 3 this cat jumped back in the bag. I don't have any objection to
15:28:53 4 his describing what the client device does because we're in
15:28:57 5 large agreement on that. But it's where he describes why
15:29:00 6 that's okay in terms of the claim he never did in the report,
15:29:06 7 and I haven't yet heard a paragraph where he did.

15:29:11 8 MR. STAKE: In the report, this paragraph 622 comes
15:29:18 9 underneath this claim language that he'll be explaining. He'll
15:29:22 10 be explaining that this selection by the client performs the
15:29:25 11 claim language. I don't believe he'll be going beyond anything
15:29:29 12 in the report.

15:29:31 13 MR. VAN NEST: If he's -- I'll take counsel's word.
15:29:33 14 If he's not going to go beyond what's in the report, then he
15:29:37 15 won't be able to use slide 84, at least as I understand what
15:29:40 16 he's planning.

15:29:41 17 MR. STAKE: We'll take a close look at that slide.

15:29:44 18 MR. VAN NEST: Thank you.

15:29:44 19 THE COURT: All right. Take a close look at that.

15:29:46 20 Now, the question of other exhibits?

15:29:50 21 MR. STAKE: Yes, Your Honor. There are three
15:29:51 22 exhibits, P-14, P-830, and P-792. Our understanding is that
15:30:04 23 Facebook has no objection to the admission of these three
15:30:05 24 exhibits.

15:30:05 25 They're each -- one is Dr. Mitzenmacher's CV, and the

15:30:09 1 other two are Facebook or Instagram documents.

15:30:14 2 MR. VAN NEST: This is the first I'm hearing of it,

15:30:16 3 Your Honor. I'll be happy to meet with counsel.

15:30:18 4 THE COURT: Why don't you take a look at that, and we
15:30:21 5 will -- if they're not objected to, we'll admit them without
15:30:24 6 them needing to be sponsored in front of a witness at a
15:30:27 7 convenient time to get them in the record.

15:30:31 8 MR. VAN NEST: Normally I'm not accustomed to having
15:30:33 9 CVs go into evidence, just like expert reports.

15:30:37 10 THE COURT: That's -- if he wants to offer it, you
15:30:40 11 get to object or agree.

15:30:41 12 MR. VAN NEST: Thank you.

15:30:42 13 THE COURT: Then I'll make a decision. If your
15:30:44 14 decision is to object, I'll make -- I will tell you I've seen
15:30:51 15 it both ways, but I consider CVs different from reports. CVs
15:30:56 16 are more a summary of what he's going to testify to on the
15:31:00 17 stand about how great he is. A report is a whole lot different
15:31:03 18 because it contains a whole lot of hearsay and whole lot of
15:31:06 19 other things.

15:31:07 20 MR. VAN NEST: Sure. Thank you.

15:31:08 21 THE COURT: So, anyway, just think about that.

15:31:09 22 All right. We will be in recess for 15 minutes.

15:31:12 23 We'll be until 3:45 because we took up a little time. Let the
15:31:17 24 jury know that the court had some discussions with the lawyers,
15:31:21 25 so they can extend their recess until 3:45. Court's in recess.

18:00:00 1 (Recess)

15:50:50 2 (Open court, jury present)

15:50:50 3 THE COURT: Mr. Stone, you may continue your direct

15:50:53 4 examination of Mr. Ranney.

15:50:55 5 MR. STONE: Thank you, Your Honor.

15:50:56 6 Q. Before we took our break, just to reorient the jury, we

15:51:02 7 were having a discussion about some mysterious outages. Do you

15:51:07 8 recall that?

15:51:07 9 A. Yes.

15:51:07 10 Q. I have just one last question for you about that, which

15:51:12 11 is: Approximately how many of your users did those outages

15:51:15 12 impact?

15:51:15 13 A. Well, it was different every day, but on a bad day it

15:51:19 14 could be as many as 10 percent of our new users were unable to

15:51:24 15 sign up.

15:51:25 16 Q. Now, why are you here today?

15:51:27 17 A. We spent a lot of time, money, and effort, you know,

15:51:32 18 building -- building the system, and I'm just here to describe

15:51:36 19 what we build.

15:51:37 20 Q. Are you currently employed by Voxer?

15:51:39 21 A. No.

15:51:39 22 Q. Are you being paid to testify?

15:51:41 23 A. No.

15:51:41 24 Q. Do you have stock in Voxer?

15:51:43 25 A. No.

15:51:44 1 Q. Do you have options?

15:51:45 2 A. Yes.

15:51:45 3 Q. What are they worth today?

15:51:47 4 A. I don't know. I don't know how many I have or -- or what

15:51:51 5 they're worth.

15:51:51 6 Q. Why did you receive them?

15:51:53 7 A. Well, my founder options expired after -- after I had left

15:51:57 8 the company, and I have another full-time job. So that I'd be

15:52:03 9 able to assist the company in that situation, they gave me the

15:52:07 10 options. And assist includes this litigation.

15:52:10 11 Q. And are you taking vacation days to be here?

15:52:13 12 A. I am, yeah. I'm taking vacation from my full-time job to

15:52:17 13 be here.

15:52:17 14 MR. STONE: No further questions. Pass the witness.

15:52:23 15 MR. PAIGE: Your Honor, may I approach the witness?

15:52:35 16 THE COURT: Remember what I told you earlier?

15:52:37 17 MR. PAIGE: Thank you, Your Honor.

15:53:14 18 May I proceed, Your Honor?

15:53:15 19 THE COURT: You may. And please state your name for

15:53:17 20 the record.

15:53:18 21 MR. PAIGE: Gene Paige on behalf of Facebook and

15:53:20 22 Instagram, Your Honor.

15:53:22 23 **CROSS-EXAMINATION**

15:53:22 24 **BY MR. PAIGE:**

15:53:22 25 Q. Good afternoon, Mr. Ranney.

15:53:24 1 A. Hello.

15:53:25 2 Q. My name is a Gene Paige. We haven't met before, have we?

15:53:29 3 A. I don't believe so.

15:53:30 4 Q. Okay. Now, you testified that you participated in some

15:53:33 5 meetings with Facebook, correct?

15:53:35 6 A. Uh-huh. Yep.

15:53:36 7 Q. Now, Voxer didn't share any of Voxer's source code with

15:53:40 8 Facebook at either of the meetings you participated in,

15:53:44 9 correct?

15:53:44 10 A. Source code? No.

15:53:45 11 Q. And Voxer didn't share any technical documents with

15:53:48 12 Facebook in either of the meetings you attended, correct?

15:53:51 13 A. It was all on the white board.

15:53:53 14 Q. And Facebook Live and Instagram Live, those didn't exist

15:53:59 15 at the time of those meetings, correct?

15:54:01 16 A. That's true, yeah.

15:54:02 17 Q. And there was no discussion of either Facebook Live or

15:54:05 18 Instagram Live at those meetings, right?

15:54:09 19 A. That's right.

15:54:09 20 Q. Now, you left Voxer in September of 2014, correct?

15:54:13 21 A. Yeah. That's correct.

15:54:14 22 Q. And that was around two years after your meetings with

15:54:18 23 Facebook, right?

15:54:18 24 A. Yep.

15:54:19 25 Q. At the time you left Voxer, Voxer had not successfully

15:54:25 1 enabled live video broadcasting in its app, correct?

15:54:31 2 A. That is true. But, as I said, the server supported it,

15:54:34 3 but the app did not.

15:54:35 4 Q. And at the time of your deposition in 2021, you were still

15:54:39 5 using the Voxer app, were you not?

15:54:41 6 A. Yeah.

15:54:42 7 Q. And at the time of your deposition in 2021, you didn't

15:54:46 8 know whether Voxer enabled live video functionality since you

15:54:50 9 left the company, right?

15:54:51 10 A. That's right, yeah. I -- it's not functionality that I

15:54:55 11 personally use very often.

15:54:58 12 Q. Okay. Voxer didn't invent live audio streaming over the

15:55:02 13 Internet, correct?

15:55:03 14 A. Live audio streaming? Yeah. It existed before we came

15:55:08 15 along, yep.

15:55:09 16 Q. And Voxer did not invent live video streaming over the

15:55:12 17 Internet, right?

15:55:13 18 A. Yeah. That's -- that's true. We did not invent that

15:55:16 19 either.

15:55:16 20 Q. Skype is one example of a system that was capable of live

15:55:21 21 streaming video over the Internet before Voxer was founded,

15:55:24 22 correct?

15:55:25 23 A. Yep.

15:55:26 24 Q. And Voxer didn't invent time-shifting for video, right?

15:55:30 25 A. Yeah. As I said earlier, TiVo was an example of a simple

15:55:35 1 time-shifting system.

15:55:36 2 Q. And Voxer didn't invent adaptive bitrate streaming,
15:55:40 3 correct?

15:55:40 4 A. That's correct. We did not invent that either.

15:55:43 5 Q. Voxer didn't invent producing multiple bitrate versions of
15:55:49 6 a media stream, correct?

15:55:51 7 A. In -- yeah, in isolation, that is not a thing that we --
15:55:55 8 that we invented either.

15:55:56 9 Q. And Voxer didn't invent communication systems where a
15:56:01 10 server sits between a sending device and the receiving device,
15:56:05 11 correct?

15:56:05 12 A. Yeah. That's correct.

15:56:06 13 Q. Okay. Now, I think you mentioned, before you left Voxer
15:56:10 14 in 2014, you had received some Voxer stock options, right?

15:56:15 15 A. Before I left?

15:56:18 16 Q. You said you had founders --

15:56:19 17 A. Yeah, yeah. Sorry. Yes. When we started the company,
15:56:23 18 I -- I received a number of options, yeah.

15:56:26 19 Q. And stock options, those are the right to buy stock for a
15:56:30 20 certain price --

15:56:31 21 A. That's right.

15:56:32 22 Q. -- right?

15:56:32 23 A. Yep.

15:56:33 24 Q. And those stock options expired, right?

15:56:35 25 A. They did, yeah. At a time after I left the company, they

15:56:38 1 expired.

15:56:39 2 Q. Yeah. And that meant you no longer had the right to buy

15:56:43 3 Voxer stock at that price, right?

15:56:44 4 A. That's right.

15:56:45 5 Q. Now, in 2020, six years after you left the company, Voxer

15:56:51 6 issued you new stock options, correct?

15:56:53 7 A. That's right.

15:56:54 8 Q. Okay. You were granted those new stock options in May or

15:56:59 9 June of 2020, right?

15:57:00 10 A. It sounds about right. I can't remember the exact time.

15:57:03 11 Q. Okay. And Mr. Irv Remedios told you around that time that

15:57:08 12 you would be receiving grant stock options, correct?

15:57:12 13 A. Yes.

15:57:13 14 Q. And Mr. Remedios, he was the CEO of Voxer in 2020, right?

15:57:17 15 A. Yeah. That's right.

15:57:19 16 Q. Now, Voxer provided you with a stock option agreement in

15:57:22 17 connection with those 2020 stock options, right?

15:57:25 18 A. Yep.

15:57:26 19 Q. Okay. Could I ask you to open your binder to DTX618.

15:57:36 20 MR. PAIGE: And, Your Honor, this is in evidence.

15:57:38 21 A. Okay. Yep. I have that.

15:57:42 22 Q. Now, this is a stock option agreement that Voxer provided

15:57:45 23 you in 2020, correct?

15:57:46 24 A. Yes. This looks like -- this looks like the agreement.

15:57:49 25 Q. Okay. And that's your name on the signature line of

15:57:51 1 page 1, right?

15:57:56 2 A. Yeah. That's my electronic signature where I click the
15:58:01 3 thing. That's no my handwriting. But I did click the
15:58:01 4 electronic agreement and agree to it.

15:58:03 5 Q. You signed it?

15:58:04 6 A. I did, yes. I'm just saying that's not my signature, my
15:58:07 7 handwriting signature.

15:58:08 8 Q. Fair enough. Now the agreement, the options, were granted
15:58:16 9 June 4th, 2020, right?

15:58:17 10 A. Yeah. That's what it says.

15:58:18 11 Q. And June 2020 is around the time that Mr. Remedios told
15:58:22 12 you that Voxer would be granting you new options, right?

15:58:24 13 A. Yeah. Yeah.

15:58:25 14 Q. And this agreement, it grants you 1 million Voxer stock
15:58:33 15 options over time, right?

15:58:34 16 A. Yeah. That's what it says.

15:58:35 17 Q. An each option, that allows you to purchase a share of
15:58:38 18 Voxer stock for one penny, right?

15:58:40 19 A. Yeah. One penny, yep.

15:58:42 20 Q. Okay. And the agreement, it incorporated the applicable
15:58:46 21 documents available for download and connection with the equity
15:58:50 22 award, right?

15:58:51 23 A. Yeah. Yeah. For sure.

15:58:53 24 Q. Okay. And there are three plan options, documents, listed
15:58:58 25 on this page, right?

15:58:59 1 A. Yeah.

15:58:59 2 Q. In the blue there?

15:59:01 3 A. Yeah, yeah, yeah.

15:59:01 4 Q. And one of those is a 2012 equity incentive plan, right?

15:59:06 5 A. Yeah.

15:59:07 6 Q. Can you turn a few pages and look at that, the 2012 equity

15:59:12 7 incentive plan, please?

15:59:15 8 A. Is that on page 6 of 44?

15:59:17 9 Q. Page 6. Yes, sir.

15:59:19 10 A. Yeah. Yep.

15:59:22 11 Q. Now, the first paragraph there is entitled "Purpose,"

15:59:25 12 right?

15:59:25 13 A. Yeah.

15:59:26 14 Q. And it says: "The purpose of this plan is to provide

15:59:30 15 incentives to attract, retain, and motivate eligible persons

15:59:37 16 whose present and potential contributions are important to the

15:59:40 17 success of the company, its parents, and subsidiaries by

15:59:46 18 offering eligible persons an opportunity to participate in the

15:59:49 19 company's future performance through the grant of awards

15:59:53 20 covering shares." Right?

15:59:55 21 A. Uh-huh. Yep.

15:59:55 22 Q. And you weren't employed by Voxer when you received this

15:59:59 23 option grant in 2020, right?

16:00:00 24 A. That's correct.

16:00:01 25 Q. You weren't working as a consultant for Voxer in 2020,

16:00:05 1 right?

16:00:05 2 A. By then I had not -- I hadn't been doing -- I hadn't been

16:00:09 3 talking to them too much. Irv and I had many conversations

16:00:12 4 over the years about different projects, you know, and checking

16:00:15 5 in. But, yeah, I wasn't -- I was not what you would call a

16:00:18 6 consultant for Voxer anymore.

16:00:20 7 Q. And you weren't a contractor?

16:00:21 8 A. Not a contractor. I wasn't working for Voxer anymore.

16:00:24 9 Q. Okay. In fact, you were working full-time for Uber in

16:00:27 10 June of 2020, right?

16:00:29 11 A. Yeah. That's right.

16:00:30 12 Q. So the purpose of this option grant in 2020 was not to

16:00:33 13 retain you, correct? You weren't working there?

16:00:35 14 A. That's right, yeah.

16:00:36 15 Q. And you didn't formally provide any services to Voxer in

16:00:39 16 2020, right?

16:00:41 17 A. True.

16:00:42 18 Q. So the purpose of this grant was not to attract you

16:00:45 19 either, right?

16:00:46 20 A. Yep.

16:00:47 21 Q. Okay. And, again, the first sentence begins: "The

16:00:50 22 purpose of this plan is to provide incentives to attract,

16:00:53 23 retain, and motivate eligible persons whose present and

16:00:57 24 potential contributions are important to the success of the

16:01:01 25 company." Right?

16:01:01 1 A. Yeah. I see that, yep.

16:01:03 2 Q. Okay. Now, the stock option agreement on that first page

16:01:09 3 has a space to list the grant reason on the first page, right?

16:01:12 4 A. Oh, okay.

16:01:13 5 Q. You see that up at the top?

16:01:18 6 A. Option, grant holder, grant reason. None entered. Yes.

16:01:23 7 I see that.

16:01:24 8 Q. That was my next question. In red letters "none entered"

16:01:27 9 for reason?

16:01:27 10 A. Yeah. Yeah.

16:01:28 11 Q. Okay. But when you discussed why Voxer was granting these

16:01:33 12 stock options to you with Mr. Remedios, Mr. Remedios said that

16:01:37 13 it was because Voxer hoped that it could count on your help if

16:01:40 14 we need it, correct?

16:01:42 15 A. That's right, yeah.

16:01:42 16 Q. Okay. You hadn't asked for those additional stock

16:01:45 17 options, correct?

16:01:46 18 A. No, I did not.

16:01:47 19 Q. And prior to 2020, Voxer had not reached out to you to

16:01:50 20 grant you additional stock options since you left Voxer, right?

16:01:54 21 A. Nope.

16:01:54 22 Q. And sometime after this lawsuit was filed, Mr. Katis, he

16:01:59 23 told you you might be called on to testify in this case, right?

16:02:03 24 A. Yeah. Yeah.

16:02:04 25 Q. Okay. Now, the stock option agreement states on page 1

16:02:08 1 the board approved the option grant on June 4, 2020, right?

16:02:12 2 A. Yeah. That's what it says.

16:02:14 3 Q. Let's look at page 2 to see when the stock options began

16:02:18 4 to vest. What's the first date the stock options began to vest

16:02:22 5 according to that page, vesting start?

16:02:24 6 A. Vesting start, January 6, 2020.

16:02:28 7 Q. And you're aware this lawsuit was filed on January 7th,

16:02:31 8 2020, aren't you?

16:02:32 9 A. Yeah.

16:02:35 10 Q. Thank you, Mr. Ranney.

16:02:37 11 MR. PAIGE: I pass the witness.

16:02:39 12 MR. STONE: Just a few questions, Your Honor.

16:02:40 13 THE COURT: You may proceed.

16:02:42 14 **REDIRECT EXAMINATION**

16:02:42 15 **BY MR. STONE:**

16:02:42 16 Q. Mr. Ranney, you were asked about what it was that Voxer

16:02:46 17 didn't invent. Do you recall that?

16:02:48 18 A. Oh, yeah.

16:02:48 19 Q. Did Voxer invent the subject matter of the '270 patent?

16:02:52 20 A. Yes.

16:02:53 21 Q. Did Voxer invent the subject matter of the '557 patent?

16:02:57 22 A. Yes.

16:02:58 23 Q. The patent officer agreed?

16:03:00 24 A. Yes.

16:03:00 25 Q. And did Voxer invent the subject matter of another 148

16:03:04 1 patents that you're a named inventor on?

16:03:06 2 A. Yes.

16:03:07 3 MR. STONE: No further questions.

16:03:09 4 THE COURT: Any recross?

16:03:11 5 MR. PAIGE: No, Your Honor. Thank you.

16:03:12 6 THE COURT: You may step down.

16:03:14 7 THE WITNESS: Okay.

16:03:23 8 MR. STAKE: Voxer calls Professor

16:04:19 9 Michael Mitzenmacher.

16:04:19 10 THE COURT: All right. And please again state your
16:04:21 11 name for the record.

16:04:22 12 MR. STAKE: Sam Stake on behalf of Voxer.

16:04:56 13 (Witness sworn)

16:04:56 14 **MICHAEL MITZENMACHER,**

16:04:56 15 having been first duly sworn, testified as follows:

16:04:56 16 **DIRECT EXAMINATION**

16:04:56 17 **BY MR. STAKE:**

16:04:56 18 Q. Good afternoon, Dr. Mitzenmacher.

16:04:59 19 A. Good afternoon.

16:04:59 20 Q. State your full name and where you currently live.

16:05:01 21 A. Michael David Mitzenmacher. I live in Lexington,
16:05:04 22 Massachusetts.

16:05:04 23 Q. And what is your job?

16:05:05 24 A. I'm a professor at Harvard University.

16:05:09 25 Q. What are you here to testify about today?

16:05:12 1 A. I'm here to testify today, I guess, about the infringement
16:05:16 2 of the two patents that we've talked about and some related
16:05:19 3 issues.

16:05:20 4 Q. Have you prepared a set of slides to share with the jury?

16:05:26 5 A. Yes. I prepared a set of slides, demonstratives, to share
16:05:31 6 with the jury as I discuss this.

16:05:32 7 Q. And these are your slides up here?

16:05:34 8 A. Yes.

16:05:34 9 Q. Okay. Before we turn to Voxer's patents, I'd like to ask
16:05:42 10 you a few questions about your background. Could you please
16:05:43 11 tell us about your education.

16:05:45 12 A. Sure. I got my undergraduate degree at Harvard University
16:05:49 13 in 1991, where I majored in mathematics and computer science.
16:05:54 14 I then got to go for a year on a fellowship to the University
16:05:58 15 of Cambridge in England to study mathematics. I received what
16:06:02 16 they call a certificate of advanced study. It's sort of the
16:06:06 17 equivalent to a master's. And then I came back to Berkeley,
16:06:10 18 where I got my Ph.D. in computer science in 1996.

16:06:14 19 Q. Thank you. What kind of thesis work did you do?

16:06:17 20 A. My Ph.D. thesis involved load balancing for large-scale
16:06:22 21 systems. So, in particular, it would apply to various sorts of
16:06:27 22 networking systems and web-based traffic systems.

16:06:30 23 Q. When did you become a professor at Harvard?

16:06:38 24 A. I started in January 1999. After I graduated, I went
16:06:40 25 to -- I actually worked at a research lab for a couple of years

16:06:42 1 at Digital Systems Research Center and then joined Harvard in
16:06:46 2 1999. And I've been there since.

16:06:47 3 Q. Do you teach any courses at Harvard?

16:06:50 4 A. Yes, I do. I teach both undergraduate and graduate

16:06:53 5 courses.

16:06:54 6 Q. And are there any particular courses that you teach?

16:06:57 7 A. Yeah. So my undergraduate course is on algorithms and

16:07:03 8 data structures. It's one of the core courses in the

16:07:05 9 curriculum. My graduate courses, the one I'm teaching now this

16:07:09 10 semester, relates to networks and, in particular, algorithms

16:07:14 11 and data structures for improved networks and network

16:07:18 12 efficiency. And my other graduate class that I teach in other

16:07:20 13 years is on randomized algorithms and probabilistic processes.

16:07:26 14 Q. Do you have any industry experience?

16:07:27 15 A. Yes, I do. So besides, you know, working at Harvard, I've

16:07:34 16 also obviously done some work as an expert witness in the past.

16:07:40 17 I've also done some consulting at companies. Again, I work at

16:07:43 18 Digital and consulted for them for a bit. After I left,

16:07:49 19 Microsoft, a company called Digital Fountain, eHarmony, Akamai,

16:07:54 20 Adverplex.

16:07:54 21 Q. Can you give us some examples of the kind of work you've

16:07:58 22 done for these companies?

16:07:59 23 A. Sure. So eHarmony is always a fun one to talk about. If

16:08:04 24 people remember, eHarmony was one of the matchmaking companies.

16:08:07 25 And there's actually -- I got to be on their science board for

16:08:11 1 a few years, a there's actually a lot of algorithmic work. You
16:08:14 2 know, there's the sort of psychology aspect of trying to figure
16:08:17 3 out the matches, but then there's the algorithmic work of,
16:08:21 4 well, if there's one popular person, you don't want to match
16:08:24 5 them with everybody, so how do you manage the matches to sort
16:08:27 6 of spread them out and evenly distribute them among everyone.

16:08:33 7 Q. Are you the author of any books or publications?

16:08:37 8 A. Yeah. So I have, for instance, written a textbook that
16:08:43 9 has to do with my graduate course on probability computing,
16:08:47 10 randomization and probabilistic techniques and algorithms and
16:08:48 11 data analysis.

16:08:48 12 And I also, you know, I should say, as a professor,
16:08:55 13 you know, you have a variety of jobs. Obviously, one job is
16:08:56 14 teaching students, which is something I do greatly enjoy. And
16:09:00 15 another big part of the job at a research university is
16:09:04 16 continuing to do original research. So at this point in my
16:09:07 17 career, I've published over 250 academic papers.

16:09:14 18 Q. Are you the inventor on any patents?

16:09:15 19 A. Yes, I am. I'm also listed as an inventor and coinventor
16:09:18 20 on 19 issued patents.

16:09:24 21 Q. What currently is your main research area?

16:09:25 22 A. Yes. So currently my research area, there's sort of two
16:09:28 23 things that are my main areas that I have grants on, for
16:09:31 24 instance. One of them has to do with, actually, as you might
16:09:35 25 imagine, algorithms and data structures for networking

16:09:39 1 applications. So there I'm actually working at Harvard with --
16:09:42 2 this is a joint grant with the networking faculty, and we're
16:09:46 3 working together on a variety of problems, many related to
16:09:49 4 network telemetry. So that telemetry is measuring the network,
16:09:55 5 what's going on in network, trying to find where problems are,
16:09:58 6 where issues are in advance by taking these measurements as
16:10:02 7 things are going through the network.

16:10:03 8 My other research grant is on kind of a new area that
16:10:07 9 I'm at the beginning of called algorithms with predictions. So
16:10:14 10 the idea here is, can we take predictions from things like
16:10:16 11 machine learning tools or machine learning algorithms and use
16:10:20 12 them to get better algorithms and data structures that we can
16:10:23 13 use, you know, for real applications.

16:10:32 14 Q. Professor Mitzenmacher, have you received any awards?

16:10:35 15 A. Yeah. So back in college I received a Hoopes prize. This
16:10:37 16 is a prize given to, you know, the top senior thesis in the
16:10:42 17 various areas. When I started my career as a professor, the
16:10:45 18 National Science Foundation, that's one of the government
16:10:50 19 groups that funds research, particularly for people in
16:10:54 20 universities and elsewhere, I got what's called a CAREER award.
16:10:58 21 That's an award given to, you know, young promising faculty to
16:11:04 22 help them at the start of their careers.

16:11:06 23 Very recently I was honored to share the ACM Paris
16:11:13 24 Kanellakis Theory and Practice Award. So this had to do
16:11:16 25 actually for my work on load balancing. And, you know, the

16:11:21 1 award there is designed to -- for work that has had an impact
16:11:26 2 on both theory and practice. And I've also won various Best
16:11:30 3 Papers awards at conferences and so on, and some of them are
16:11:35 4 listed here.

16:11:36 5 Q. Are you being compensated for your work on this case?

16:11:39 6 A. Yes. I am being compensated for my work. My standard
16:11:43 7 rate of \$900 an hour.

16:11:46 8 Q. Is your compensation tied in any way to the results of
16:11:50 9 this case?

16:11:50 10 A. No. I'm only getting paid for my time.

16:11:54 11 MR. STAKE: Your Honor, at this time Voxer tenders
16:11:56 12 Dr. Mitzenmacher as an expert in the fields of computer
16:11:59 13 networking and multimedia processing.

16:12:02 14 MR. VAN NEST: No objection, Your Honor.

16:12:03 15 THE COURT: All right. The witness may testify and
16:12:05 16 express opinions in his area of expertise, as described by
16:12:10 17 counsel.

16:12:17 18 Q. (BY MS. STAKE) Now you mentioned that you analyzed two
16:12:19 19 Voxer patents. What conclusions did you reach?

16:12:22 20 A. Yes. So I'll be discussing today in my discussion of the
16:12:25 21 patents the '270 patent that we've been talking about today.
16:12:29 22 I'll be discussing infringement of Claims 34, 47, 48 and 51.
16:12:35 23 And it is my opinion that those claims are infringed. For the
16:12:39 24 '557 patent, I'll be offering my opinion that Claims 1 and nine
16:12:45 25 are infringed.

16:12:46 1 I will also discuss some aspects that relate to
16:12:50 2 something call technical apportionment. I'll describe that
16:12:54 3 more in detail later. That's looking at the process to try and
16:12:57 4 provide sort of a technical basis for what the underlying value
16:13:01 5 is to the products -- of the patents to the Facebook products.

16:13:06 6 And I may also come back later in these proceedings,
16:13:11 7 I understand, you know, after I present argument, as the Court
16:13:16 8 has said, you know, Facebook will come up and present their
16:13:19 9 argument. And on some of the issues such as, you know, some
16:13:27 10 issues may be reached on infringement or responding to validity
16:13:31 11 or noninfringing alternatives and licenses, I may come back and
16:13:35 12 provide some opinions.

16:13:37 13 Q. Now, briefly, what materials did you consider in forming
16:13:42 14 your opinions?

16:13:45 15 A. So when you're doing this job as an expert witness, you
16:13:48 16 sort of look at everything you can get your hands on. So, you
16:13:52 17 know, obviously a starting point is my own experience both in
16:13:56 18 industry and as an academic. But then starting with the case,
16:14:01 19 obviously, you start with the patents, and you look at the
16:14:05 20 patents themselves, but also the histories of the patents.
16:14:09 21 Those are called the file histories. We've heard the inventors
16:14:11 22 talking about dating all the way back to these provisional
16:14:14 23 patents, which is where it started.

16:14:16 24 Besides that you look at the documents that are
16:14:20 25 produced in the case, in particular, the documents produced by

16:14:24 1 Facebook. So Facebook has a variety of technical documentation
16:14:29 2 describing both the Facebook Live product and the Instagram
16:14:33 3 Live product that I examined and studied. I also got to look
16:14:37 4 at the source code. I also, you know, did some testing of
16:14:41 5 the -- of the accused products and, in particular, focusing on
16:14:44 6 the accused functionality related to the patent claims.

16:14:49 7 Finally, there are a number of documents that are
16:14:52 8 given or presented by the court. So there's something called a
16:14:56 9 claim construction order where the court may define some of the
16:14:59 10 terms of the claims that need defining. There's depositions.
16:15:03 11 So, you know, the attorneys for Voxer got to essentially
16:15:09 12 interview or ask questions of the Facebook engineers, and I
16:15:13 13 looked at their testimony and utilized that.

16:15:16 14 There's various other documentation that, you know, I
16:15:20 15 think we've already seen in these proceedings where the lawyers
16:15:23 16 can ask questions to the other side and get back responses, so
16:15:28 17 I looked at those. And, of course, I considered the expert
16:15:31 18 reports, you know, given by the other side and their experts as
16:15:35 19 well.

16:15:36 20 Q. Are you going to present to the jury here today all of the
16:15:39 21 evidence you saw that Facebook infringes Voxer's patents?

16:15:43 22 A. No. But simply because we just don't have time. You
16:15:47 23 know, there's a limited amount of time set for the case. You
16:15:50 24 know, we don't want to keep you here for a month. I don't
16:15:53 25 think you want to be here for a month. So I had to go through

16:15:56 1 and try and pick out, you know, what I thought was compelling
16:16:01 2 evidence or the best evidence for you.

16:16:03 3 Q. You mentioned claim construction. What construction did
16:16:11 4 you apply when analyzing the claims of the '270 and '557
16:16:15 5 patents?

16:16:19 6 A. So I utilized the plain and ordinary meaning. Well, in
16:16:22 7 particular, there was a specific term used in the patent claims
16:16:28 8 that the court construed, "end-to-end connection." And the
16:16:30 9 court said that term should have its plain and ordinary
16:16:34 10 meaning. And for all other terms, I also used the plain and
16:16:36 11 ordinary meaning. And, again, one understands that's in the
16:16:39 12 context of the patents and how they're used there.

16:16:45 13 Q. Is there any dispute that all the terms of these patents
16:16:49 14 should be given their plain and ordinary meaning with Facebook?

16:16:51 15 A. No. Not that I'm aware of.

16:16:59 16 Q. Could you tell us a bit about the two patents you'll be
16:17:01 17 discussing today.

16:17:01 18 A. Yes. So, as you've seen before, the patents are
16:17:04 19 10,142,270, and we'll just refer to that as the '270 patent,
16:17:10 20 10,511,557, that's the '557 patent. They both share a title
16:17:17 21 "Telecommunication and Multimedia Management Method and
16:17:20 22 Apparatus." And they share the inventors, some of whom we've
16:17:25 23 already heard from.

16:17:28 24 Q. Now, I want you to take us back to the state of computer
16:17:33 25 communications at the time that the '270 and '557 patents were

16:17:38 1 filed. What year was that?

16:17:39 2 A. They were filed, as we've heard, in 2007.

16:17:42 3 Q. I see on this slide you refer to real-time media and
16:17:46 4 time-shifted media. What do you mean by the word "media" here?

16:17:50 5 A. So, as we've heard, again, "media" can refer to different
16:17:56 6 types of information, in particular, the ones of most issue
16:17:59 7 here are audio and video, although, again, texts and other
16:18:03 8 things can be media as well.

16:18:05 9 Q. Now, how was the way that computers communicated media in
16:18:09 10 2007 different than today?

16:18:11 11 A. Well, so as the patent describes, you know, in the 2007 or
16:18:17 12 so time frame, you know, there were really two main ways that
16:18:22 13 you would see in systems for dealing with media. So one is
16:18:27 14 something that we'll refer to as real time. And the idea
16:18:31 15 there, as we've heard, is that real time is supposed to be sort
16:18:36 16 of as it's happening, as you're generating, say, the video gets
16:18:40 17 sent and received by the other side. And, again, we do keep in
16:18:44 18 mind real time is like best effort, right? It can't just
16:18:48 19 instantaneously get there, but it will get there as fast as the
16:18:51 20 network reasonably can get it.

16:18:53 21 And the way real-time media would work, though, is --
16:18:57 22 you know, again it's the sort of telephone analogy, that in
16:19:01 23 order to send this real-time media, you know, we'd first have
16:19:05 24 to establish a connection. You'd have to be like, okay, let's
16:19:10 25 get ourselves set up. We're going to set up a phone call.

16:19:12 1 That can be done, you know, for instance, through network
16:19:17 2 protocols. We set up a connection, and then once the
16:19:19 3 connection is set up and everyone is ready, then I can start
16:19:23 4 sending a you video.

16:19:25 5 And that way -- and, again, that can be
16:19:27 6 one-directional or bidirectional, and bidirectional we might be
16:19:32 7 trying to exchange messages in real time.

16:19:35 8 Q. And in time-shifting media?

16:19:37 9 A. In time-shifting media, that's more of an e-mail analogy,
16:19:39 10 that you'd have to -- like, I might prepare a video in advance,
16:19:43 11 record the whole thing, and then it's, like, okay, I've got my
16:19:46 12 message. Now I'm just going to send it to you some way. You
16:19:49 13 know, there are various network protocols for that, or, in some
16:19:52 14 cases, you can even send it as, like, an e-mail type
16:19:55 15 attachment.

16:19:56 16 Q. Were there any drawbacks of these pre-2007 computer
16:20:02 17 communication methods?

16:20:04 18 A. Yeah. I mean, each of them -- and, again, these are sort
16:20:07 19 of described and discussed in the patents in the background.
16:20:11 20 You know, each of them had their own problems. So if you're
16:20:15 21 doing real time, you know, you'd have to establish this
16:20:19 22 end-to-end connection. You'd have to get both parties together
16:20:22 23 on the system, agree to get going, and then, you know, once the
16:20:26 24 connection is established, you could start.

16:20:28 25 And, you know, so everything relied on that

16:20:31 1 connection. And, in particular, if that connection was broken
16:20:34 2 in some way or if the connection was lost, you know, that was
16:20:37 3 it. You were stuck. The media would drop, and you would have
16:20:41 4 to try again.

16:20:43 5 For time-shifted, what you're losing there, what the
16:20:46 6 drawback is, is that it's a one-way type system. You don't get
16:20:51 7 that benefit of interactivity. You don't get that it's, you
16:20:55 8 know, you're seeing what's happening in real time. And there
16:20:59 9 are various aspects of, you know, the time-shifted type systems
16:21:03 10 that were both burdensome and time-consuming, again, like
16:21:07 11 having to set up or record everything in advance.

16:21:10 12 Q. Now, in your review of the materials that you considered,
16:21:13 13 were the Voxer inventors aware of these problems in prior -- in
16:21:18 14 prior computer communications systems?

16:21:21 15 A. Yes. I mean, this is -- these are the sorts of things
16:21:24 16 that they talk about in the patent, and these are the problems
16:21:27 17 that they state that they were aiming to solve.

16:21:30 18 Q. Now, at a high level, how did Voxer improve upon these
16:21:34 19 preexisting methods?

16:21:36 20 A. So at a high level, what they were trying to do is build a
16:21:44 21 sort of hybrid system that would give us the best of both of
16:21:46 22 these worlds, right, that would allow for you to do a real-time
16:21:50 23 communication without having to do this sort of setting up to
16:21:53 24 begin with. Ideally, you know, we hear this push-to-talk where
16:21:59 25 you just push a button. You know, you can push a button and

16:22:02 1 just start, and it just appears instantaneous. There's no wait
16:22:07 2 or delay because you're not having to set up this sort of
16:22:09 3 connection. But, at the same time, you know, maybe the other
16:22:12 4 person is not even on the network right now, right? So you
16:22:15 5 have things like that that the data would be recorded and kept,
16:22:18 6 and so someone could come back and look at it later.

16:22:22 7 So the idea was to create a sort of seamless, natural
16:22:26 8 hybrid specifically for computer communication and, in
16:22:28 9 particular, video type and audio messages, you know, that
16:22:34 10 would -- that would give the benefits of both and take away the
16:22:37 11 problems of each.

16:22:39 12 Q. Now, we'll get more into the details of Voxer's solutions
16:22:44 13 when we analyze their claimed inventions. But, for now, did
16:22:49 14 you prepare an animation to explain Voxer's patented technology
16:22:52 15 at a high level?

16:22:53 16 A. Yeah. So before we get sort of diving in. And, trust me,
16:22:57 17 I think we're going to spend plenty of time getting into the
16:23:01 18 detailed actual elements of the claim, I want to try and
16:23:04 19 present things at a high level to ground us when we get to that
16:23:07 20 point.

16:23:07 21 Q. So what are the components that you included in your
16:23:10 22 animation here?

16:23:12 23 A. So my animation the idea is we have a sender, someone who
16:23:15 24 is going to want to send a video. We have multiple recipients,
16:23:19 25 here labeled A and B, who are going to at the end of this

16:23:25 1 receive the video. And we have, you know, the servers in the
16:23:28 2 middle that are going to help manage and handle the data in
16:23:32 3 order to -- in order to relieve the issues that we've been
16:23:37 4 talking about from the point of view of the sender and the
16:23:39 5 receiver.

16:23:40 6 Q. Now, have you identified several hallmarks of Voxer's
16:23:46 7 technology?

16:23:47 8 A. Yes. And I'll discuss -- again, this is at a high level.
16:23:49 9 We'll get into how these relate to the claims in a minute.
16:23:53 10 But, again, just to ground us, you know, what I consider some
16:23:55 11 of the hallmarks of Voxer's technology.

16:23:58 12 Q. Okay. What was first key feature of Voxer's technology?

16:24:02 13 A. Right. So one of the key features is this idea that we
16:24:05 14 can send the media before ascertaining the location of the
16:24:09 15 identified recipient. Okay. This is the idea that the sender
16:24:13 16 again can just start, and we don't have to have this end-to-end
16:24:16 17 connection set up. I don't have to know where you are or where
16:24:20 18 the information is going because I'm sending it first to this
16:24:24 19 intermediate server who will manage a lot of that process.

16:24:30 20 Q. And what is an example of recipient location?

16:24:34 21 A. So a recipient location, we'll talk about this more in the
16:24:36 22 claims, an example of that would be what's called, like, an IP
16:24:41 23 address. So IP stands for Internet Protocol, and there's an
16:24:45 24 object called the Internet protocol address. So in the sort of
16:24:49 25 standard version, this looks like a collection of numbers, and

16:24:56 1 those numbers represent an address or a way to route that
16:24:59 2 information to a user.

16:25:03 3 Q. Okay. What's the second key feature of Voxer's
16:25:06 4 technology?

16:25:06 5 A. So another key feature is generating what is called
16:25:09 6 transcoded and degraded versions of the media. So the
16:25:13 7 transcoding here just means you're getting the data in say one
16:25:17 8 format and you might transcode it or put it into other formats.
16:25:22 9 In particular, you know, it might be even the same,
16:25:24 10 quote/unquote, format, but different bitrates, different
16:25:27 11 qualities.

16:25:29 12 And the reasons that you would do this, there are --
16:25:32 13 there are variety of reasons. One of the key ones that comes
16:25:36 14 up in the patent is, you know, the network conditions may make
16:25:39 15 it difficult to send, like, a very high quality video to a user
16:25:43 16 at a given time, right? If they're off in the middle of the
16:25:49 17 city, they may not have great Internet connection, you may want
16:25:53 18 to -- they may need to get a lower quality video, something
16:25:56 19 that takes less bits, less information to send, so that they
16:25:59 20 can still receive it in a timely fashion. Whereas someone with
16:26:02 21 a really good connection might be able to get, you know,
16:26:05 22 something of higher quality, and there may be a range in
16:26:08 23 between.

16:26:09 24 Q. What are the third and fourth key features of Voxer's
16:26:13 25 technology that you've identified?

16:26:15 1 A. So one of the features -- again, this is just sort of key
16:26:20 2 basic feature -- is the ability to stream real-time media. You
16:26:23 3 know, part of the design is that it would allow both a
16:26:27 4 real-time streaming component and, you know, again this
16:26:32 5 time-shifted component so that if you're not available now, you
16:26:35 6 may see it later.

16:26:36 7 Related to that -- that aspect is this no end-to-end
16:26:40 8 connection. What they wanted to be able to provide to users is
16:26:45 9 that you would have streaming, but you wouldn't have to first
16:26:48 10 set up this one-on-one -- or this connection between the users
16:26:52 11 in order to achieve that.

16:26:55 12 Q. What are the challenges of transmitting and receiving
16:26:58 13 real-time media?

16:27:00 14 A. There are many challenges in streaming. You know, we've
16:27:04 15 already talked about how it relates to one is, like, how do you
16:27:07 16 get the user something of good quality. But there are lots of
16:27:11 17 challenges or issues related to how you get it there in a
16:27:15 18 timely fashion so that, to the user, it seems like a clear and
16:27:19 19 seamless experience.

16:27:20 20 Q. Finally, what is the fifth hallmark of Voxer's technology
16:27:25 21 that you've identified?

16:27:27 22 A. So the last one is enabling the rendered media in a
16:27:36 23 time-shifted mode. So, again, we heard this from the
16:27:38 24 inventors, it's one of the key descriptions in the patent. You
16:27:42 25 want to have this ability to both send in real time, but also

16:27:46 1 allow for time-shifting, that is, allow it to be accessed later
16:27:51 2 for users that may have joined after the video is over and they
16:27:55 3 want to access it at a later time.

16:27:59 4 Q. Thank you. And when we combine all of these hallmarks,
16:28:03 5 what are the benefits of Voxer's patented technology?

16:28:07 6 A. So there are a number of benefits. Here I'm going to
16:28:12 7 highlight what I think are some of the most important ones and,
16:28:15 8 in particular, ones related to the claims we'll be talking
16:28:18 9 about.

16:28:19 10 You know, you have this real-time ability that
16:28:22 11 enables senders and recipients to interact in a real-time
16:28:26 12 fashion.

16:28:26 13 You have scalability. So by using these intermediate
16:28:31 14 servers, okay, you can imagine that a problem is, if I'm taking
16:28:35 15 my phone and I want to send audio or video out to -- to
16:28:39 16 millions of users, and, you know, I have to set up a separate
16:28:43 17 connection with each of these users, you know, my phone is
16:28:46 18 going to get overwhelmed pretty quickly. It's not going to be
16:28:50 19 able to manage all those different connections.

16:28:52 20 So by using this intermediate server system in order
16:28:55 21 to handle and manage the load, you're able to create what we've
16:28:59 22 heard of as scalability, the ability to handle more users and,
16:29:03 23 in particular, more simultaneous users in a natural and ready
16:29:09 24 fashion. So this sort of approach allows scalability to
16:29:12 25 support, you know, in cases up to millions or larger recipients

16:29:16 1 at the same time.

16:29:17 2 Another feature is that it makes the system more
16:29:22 3 adaptable. And, in particular, the claims are worried about
16:29:24 4 adaptation to things like network quality. Again, what is the
16:29:28 5 bandwidth, what level of traffic is your device currently able
16:29:33 6 to handle according to the network, and it also relates to --
16:29:37 7 to adaptability of device capabilities.

16:29:40 8 There's flexibility. So because we don't have to set
16:29:43 9 up any sort of end connection before the transmission starts, I
16:29:47 10 can -- someone can start a live video and people can join in to
16:29:51 11 that live video even if it's already started as long as it's
16:29:56 12 still going.

16:29:56 13 And then, finally, the time-shifted nature means
16:29:59 14 people can, you know, join or at least watch the video or hear
16:30:04 15 the audio even after it's done, right? So after it's done,
16:30:09 16 it's saved, and it can be accessible to users after the fact.

16:30:13 17 Q. Okay. Thank you.

16:30:15 18 Turning towards Voxer's asserted claims of its
16:30:20 19 patents, let's begin with the '270 asserted claims. How are
16:30:25 20 the hallmarks of Voxer's technology reflected in its patent
16:30:32 21 claims?

16:30:33 22 A. And, again, we'll be going through this in more detail,
16:30:36 23 but I wanted to, sort of as a starting point, show that these
16:30:39 24 hallmarks are related to the claim language of various claims.

16:30:43 25 So in particular for the '270, there are aspects that

16:30:46 1 you can see, you know, related to real-time media. So it talks
16:30:51 2 here about being able to -- you know, people on the receiving
16:30:54 3 side receiving the data while it's still being sent by the
16:30:58 4 sender side. That deals with the real-time media.

16:31:01 5 You know, no end-to-end connection. Again, there's
16:31:05 6 part of the claim language that specifically talks about having
16:31:08 7 no end-to-end connection. Ascertaining location, there's
16:31:12 8 language related in this case specifically to ascertaining
16:31:16 9 locations, and so on.

16:31:19 10 Q. Let's turn to the '557 patents. How are Voxer's hallmarks
16:31:26 11 reflected in the asserted claims of the '557 patents?

16:31:31 12 A. And, again, this is more just an overview slide to show
16:31:34 13 that these sorts of hallmarks exist in the claims. Again, we
16:31:41 14 see real-time media so that the rendering, that is, the showing
16:31:46 15 of the video, occurs while the message, if you look at number
16:31:52 16 one down there, the message is being created and transmitted.
16:31:56 17 So that's an example of real time. There are claim elements
16:31:59 18 that use the exact phrasing of real time.

16:32:00 19 No end-to-end connection, again, in the number down
16:32:04 20 at the bottom, again, it specifically says "without having to
16:32:07 21 establish an end-to-end connection," and so on for other
16:32:10 22 aspects of the claim language.

16:32:12 23 Q. Now, the '557 patent, the claims refer to a video message
16:32:19 24 service infrastructure and to video messages. What is your
16:32:22 25 understanding of that term?

16:32:23 1 A. Right. So we saw an earlier testimony that the patent
16:32:29 2 itself discusses what a message is. You know, it's an
16:32:32 3 individual unit of communication from one user to another. It
16:32:36 4 talks about, you know, the ability to have this notion of,
16:32:39 5 like, conversations and so on.

16:32:41 6 So when we talk about a video message service
16:32:43 7 infrastructure, again, this is talking about an infrastructure
16:32:49 8 that allows the passing of video messages. But it's not just
16:32:54 9 like -- you know, it's not, for instance, like the broadcast TV
16:32:57 10 that you get on your television set. The idea is that this
16:33:01 11 goes beyond that, and that's reflected in the "phrase video
16:33:04 12 message" and, in particular, "video message service
16:33:07 13 infrastructure." That at least allows, architecturally, you
16:33:14 14 know, for this sort of interactivity or users to send from one
16:33:16 15 to another.

16:33:17 16 Q. And have you included a definition of the term "message"
16:33:20 17 here, and where is that from?

16:33:23 18 A. Right. As we saw earlier, this is, you know, "message" is
16:33:26 19 explicitly described or defined in the '557 patent as an
16:33:32 20 individual unit of communication from one user to another.

16:33:36 21 Q. Let's turn to the Facebook products at issue in this case.
16:33:47 22 What Facebook products did you evaluate with regard to
16:33:50 23 infringement of the two Voxer patents?

16:33:52 24 A. We will be discussing Facebook Live and Instagram Live.

16:33:55 25 Q. What is Facebook Live?

16:33:57 1 A. So Facebook Live is, you know, a part of the larger
16:34:04 2 Facebook social network. Facebook Live in particular refers to
16:34:08 3 the technology that they use to do live streaming. So Facebook
16:34:13 4 Live allows user to, again, record themselves on their devices
16:34:18 5 and make it available as a live stream to other users.

16:34:23 6 Q. What devices does Facebook Live work on?

16:34:27 7 A. Facebook Live works on a variety of devices. It works on
16:34:32 8 iOS devices, in particular, iPhones. It works on Android
16:34:37 9 devices, in particular, Android phones. You know, it also
16:34:40 10 works -- you can, you know, watch videos off the Facebook
16:34:45 11 Live -- or sorry -- off of Facebook web page. And, similarly,
16:34:49 12 you can construct videos even off the Facebook -- a Facebook
16:34:55 13 web page.

16:34:55 14 Q. And what is Instagram Live?

16:34:58 15 A. So Instagram Live, you know, this is a product, you know,
16:35:05 16 similar to a social network. It's meant to share messages and,
16:35:09 17 in particular, videos on the live version or aspect. There are
16:35:15 18 aspects of it that are very much similar to the Facebook
16:35:18 19 product, but there are also differences.

16:35:21 20 For the most part, they are very similar with regard
16:35:27 21 to many of the infringement issues I'll discuss, including
16:35:29 22 their architecture, which is a shared architecture. But there
16:35:37 23 are some differences in things like the user interface, like
16:35:38 24 what the user can do or how the user sets things up or what's
16:35:41 25 available to them. And I'll discuss those, you know,

16:35:45 1 particular differences when they're relevant to the
16:35:48 2 infringement discussion.

16:35:50 3 Q. And on which particular devices is Instagram Live
16:35:53 4 available?

16:35:54 5 A. Okay. Instagram Live would be available on, you know,
16:35:59 6 your iOS devices, iOS phones, Android devices, Android phones.
16:36:06 7 You can also watch, like, Instagram Live videos on the web, but
16:36:11 8 the Instagram web page isn't set up so that you can create
16:36:15 9 videos.

16:36:20 10 Q. Now, have you prepared a demonstrative of the end user
16:36:23 11 experience for Facebook Live?

16:36:24 12 A. Yeah. Before we get into the claims, I think it's very
16:36:28 13 useful to have an understanding of how the products work with
16:36:33 14 regard to, you know, the Facebook Live, in particular, how it
16:36:38 15 relates to much of the discussion we'll have about the claims.
16:36:41 16 So I just want to present a bit about the user interface so
16:36:46 17 that you have an idea of what that interaction looks like from
16:36:49 18 the point of view, in particular, of a sender.

16:36:55 19 Q. Great. You said from the perspective of a sender. What
16:36:59 20 does that refer to in this slide?

16:37:01 21 A. Right. So a sender is someone who is going to create and
16:37:04 22 post a video. And so maybe we can just start, but where that
16:37:08 23 starts, you know, a user on Facebook has something called a
16:37:13 24 "feed," right? And a feed is where, you know, the information
16:37:18 25 Facebook has for you is posted, so you'll see users can post,

16:37:23 1 like, like little snippet stories, they can post videos, they
16:37:27 2 can post pictures. You know, Facebook's ads that they put onto
16:37:35 3 the system show up on the feed and so on. So the feed is sort
16:37:38 4 of like your starting point where, as a user, you sort of see
16:37:42 5 what Facebook is giving you.

16:37:47 6 Q. And if you want to start a Facebook Live transmission,
16:37:50 7 where do you go from the news feed?

16:37:54 8 A. Right, from feed you can say, well, I want to start a
16:37:56 9 post. I want to create something I can distribute onto
16:38:00 10 Facebook. And, again, there are different types of posts you
16:38:03 11 could put. You could put up things like photos and so on. But
16:38:07 12 one of the things that you can create when you do a post is a
16:38:11 13 live video. And if you look at the user interface, I'm just
16:38:15 14 speaking of user interfaces. I'm just going to try this right
16:38:20 15 there. You can see the live video on the user interface.

16:38:28 16 Q. Now, how does a Facebook user decide who is going to get
16:38:32 17 their video -- their live video?

16:38:34 18 A. Okay. So part of the user interface in Facebook Live is
16:38:38 19 that you can choose the audience, right? So you can say who is
16:38:42 20 going to be the audience of, in particular, this video that I'm
16:38:46 21 creating. So there are variety of choices that you can have.

16:38:51 22 So you can send it to -- or you can -- yeah. You can
16:38:55 23 send it to your friends, right? So your friends -- so friends
16:39:00 24 are something that you set up on Facebook. You can say, oh,
16:39:06 25 I'm going to connect with someone. I'm going to list them as

16:39:08 1 one of my friends, right? That's sort of a special grouping
16:39:11 2 that Facebook has available.

16:39:15 3 But maybe you don't want to send a video you're
16:39:18 4 creating to all your friends, right? Maybe this isn't a video
16:39:22 5 I want to share with everyone, just with some people. So you
16:39:25 6 can also share it with specific friends. That's one of the
16:39:29 7 options. There's one for "friends except," right? So you can
16:39:32 8 say I'm going to take off some of my friends. You know, I
16:39:36 9 don't want this -- my mom to see this video or something like
16:39:40 10 that.

16:39:41 11 You know, there's also an option to send it to
16:39:44 12 public, which just sort of means that it's available
16:39:48 13 essentially to all of Facebook, and through various ways, might
16:39:54 14 even be accessible to people off of Facebook.

16:39:56 15 You can see there is lists. You can create other --
16:39:59 16 other lists of possible people you want to send to. You can
16:40:03 17 sort of construct your own list. There are other parts of the
16:40:06 18 interface that may let you also share it to specific pages or
16:40:11 19 groups. There are certain groups you can send it to as well.

16:40:16 20 Q. And what happens after this selection is made?

16:40:19 21 A. All right. So you can go to -- you know, after you've
16:40:23 22 decided who you might send it to, it will show you a screen
16:40:26 23 where it's ready to -- you know, where you're ready to record.
16:40:31 24 So you would hit this recording button by hitting "go live,"
16:40:36 25 and then your device will start recording and start shipping

16:40:40 1 the video out to others or, in particular, to the Facebook
16:40:45 2 system to distribute to others.

16:40:47 3 Q. How does a stream end?

16:40:49 4 A. So, well, this I think actually shows the streaming. This
16:40:56 5 is very boring video, I think. Sorry can you go back one.

16:41:01 6 This is very boring video of a pen. But, you know, there are
16:41:05 7 various ways that you can introduce or get interactivity
16:41:09 8 through the Facebook system. One of them you can see at the
16:41:12 9 bottom, it says "comments will appear here." One of the ways
16:41:16 10 that you can have interactivity is that people can comment on
16:41:20 11 your video, and you'll see those comments.

16:41:22 12 So, again, it's a system that allows, because you're
16:41:28 13 going in real time, you can comment on things as they are
16:41:32 14 happening or you could comment later after it's already
16:41:36 15 finished.

16:41:37 16 Q. And I jumped ahead a little. My apologies. And what
16:41:44 17 happens when a stream ends?

16:41:45 18 A. So once you end the stream, you can push a button and say,
16:41:48 19 like, I'm done and end the stream. You know, your broadcast
16:41:52 20 ends, and you have the option to, you know, post the stream
16:41:57 21 itself, that is, you can convert and say, okay, I want the
16:42:00 22 stream to be saved and made available to people later.

16:42:05 23 So this is -- you know, there are different
16:42:08 24 terminology for it. In Facebook they call it for instance a
16:42:12 25 "was live video." So the idea is that it was a live video, now

16:42:17 1 it's not. So it's "was live." These are also sometimes called
16:42:21 2 video-on-demand type videos. Someone can come ask for them
16:42:26 3 later. So you have the ability to say, okay, I would like this
16:42:29 4 to made available to people later.

16:42:32 5 Q. And where are "was live" videos made available to users?

16:42:37 6 A. Right. So they're stored within the Facebook system, and
16:42:42 7 users can -- again, they may see them on their feed. There are
16:42:46 8 variety of ways they can access them. They could say, oh, let
16:42:50 9 me find recent videos from this user. There are a variety of
16:42:53 10 interfaces that they might use on Facebook to find that video.

16:42:57 11 Q. Now, we've focused so far on the sender's perspective for
16:43:02 12 Facebook Live. I'd like to turn with you to the recipient's
16:43:06 13 perspective. What does Facebook Live look like from a
16:43:10 14 recipient's point of view?

16:43:13 15 A. So, again, one of the ways that you can -- you know, that
16:43:16 16 a recipient will see a live video is it can show up in their
16:43:21 17 feed. So some videos that they may start to play the first few
16:43:26 18 seconds automatically so that you can see what they're doing.
16:43:29 19 Others may just say, you know, here's this live video.

16:43:33 20 Again, there are other ways to access live videos
16:43:36 21 besides the feed. You know, there are pages that have live
16:43:39 22 videos or groups and so on. I'll focus on feed because that's
16:43:43 23 one of the most natural interactions in Facebook. But you may
16:43:48 24 see, you know, there's a live video on your feed and then you
16:43:51 25 say, okay, yeah, let's watch. And so you, you know, click or

16:43:55 1 just push on the screen and then the video will appear.

16:44:00 2 And then, as the video appears, the video will be on

16:44:04 3 or while it's going on, you can see here also you can write a

16:44:09 4 comment, you'll see some of the comments that are going on.

16:44:12 5 Again, it provides this the, sort of, interactivity.

16:44:20 6 Q. Thank you. Let's turn over to Instagram Live, and let's

16:44:25 7 start again from the sender's perspective of sending Instagram

16:44:28 8 Live video. What's shown here?

16:44:33 9 A. So there's a similar set of shots that I have, again,

16:44:37 10 showing the user interface. And, again, this is a place where

16:44:43 11 I can show some of the similarities and the differences in

16:44:47 12 terms of the user interface. But, at a high level, it works in

16:44:51 13 a very similar fashion.

16:44:53 14 So, in particular, for Instagram, again, users have a

16:44:56 15 feed, and feeds contain, you know, what they call stories or,

16:45:01 16 again, we might also call posts. You know, those are things

16:45:05 17 that your friends or people that you follow are showing on

16:45:11 18 Instagram.

16:45:13 19 Q. Can an Instagram user also specify who is going to get the

16:45:17 20 live video?

16:45:18 21 A. Yeah. There are multiple, different ways -- and I'll

16:45:23 22 discuss this in more depth again as we go forward -- of

16:45:27 23 Instagram being able to determine who will -- who can see the

16:45:31 24 video. So one of the ways is there is a privacy setting. So

16:45:38 25 you can choose the privacy setting for your account. The

16:45:42 1 privacy setting here is just to make it either private or
16:45:44 2 public.

16:45:45 3 So if you make it a private account, that means that
16:45:48 4 only the people who are following you, that is, like only the
16:45:52 5 people who you're connected to, will be able to see the things
16:45:56 6 that you post or, in particular, the video -- the live videos
16:46:00 7 that you post.

16:46:02 8 You can also say, no, I don't need this to be
16:46:06 9 private. I'm happy to have my account be public. And then,
16:46:09 10 you know, essentially, any Instagram user has access to your
16:46:14 11 videos.

16:46:15 12 Q. And on the option of sending to followers, does a user
16:46:19 13 have control over his or her followers?

16:46:22 14 A. Yes. A user would have control over his or her followers.
16:46:27 15 So, for instance, you would have to accept someone to have them
16:46:28 16 be one of your followers. You can also block followers in
16:46:33 17 various ways through the user interface.

16:46:35 18 Q. And who receives the Instagram Live video if the sender's
16:46:39 19 account is set to public?

16:46:41 20 A. Anyone will receive it.

16:46:47 21 Q. How does a user then start an Instagram Live video?

16:46:51 22 A. So, again, there's a part of the user interface you can go
16:46:58 23 to, and you see down here on the bottom, again, you're creating
16:47:01 24 a new story, and you can set it to live. And then the little
16:47:07 25 button there on the bottom, you hit the button and then you're

16:47:09 1 starting your live video. And, again, this is a very boring
16:47:12 2 video of a pen, you know, but that would be something that you
16:47:16 3 could record and start sending out to people.

16:47:20 4 Q. Okay. And what happens when you select this live option?

16:47:23 5 A. Again, it just starts recording and sending out. And you
16:47:27 6 can see here in the interface there's both various ways that
16:47:33 7 you can see a notification happening and various ways that, you
16:47:39 8 know, you can see interaction happening.

16:47:42 9 So one of the -- you know, you see here the interface
16:47:46 10 on the bottom, it says we're telling you followers that you're
16:47:49 11 starting a live video, and so your followers would be informed
16:47:53 12 of your live video. Again, very similar to Facebook, there's
16:47:59 13 the ability to do comments. So you can have comments back and
16:48:03 14 forth.

16:48:03 15 You know, there's also an option here -- and there's,
16:48:07 16 again, sort of similar things or ideas in Facebook. But, you
16:48:14 17 know, in particular here, you can add a guest to be in your
16:48:17 18 live video. So you can -- what that does is, if you set
16:48:22 19 someone up to be a guest, it actually shows the two of you
16:48:25 20 together or both of your videos.

16:48:28 21 Q. Thank you. And I see a triangle icon in the lower, right.
16:48:32 22 What does that button do?

16:48:34 23 A. Oh, okay. So, yeah, if you look at the very lower right,
16:48:39 24 I could -- let me see if I can use my other toy here. Right
16:48:45 25 down there at the bottom there, there is a pair of triangles.

16:48:51 1 I think it's actually supposed to be a paper airplane from what
16:48:55 2 I understand. So this is called Direct Messaging. So you can
16:49:02 3 specifically say, like, I want a notification sent to some of
16:49:07 4 my followers, you know, because I really want them to know that
16:49:11 5 this video is there or I want to encourage them to hop on this
16:49:15 6 video.

16:49:15 7 Q. Could you please explain how Instagram Direct Messaging
16:49:20 8 operates?

16:49:21 9 A. So when a direct message comes up, you know, you would get
16:49:25 10 a list of your followers and you can sort of pick out one or
16:49:28 11 more of them that you want, say, notify, and they'll receive a
16:49:34 12 notification saying, like, yep, okay, this person is sending a
16:49:36 13 video.

16:49:37 14 Q. Okay. Once a sender is done sending a live video in
16:49:41 15 Instagram, what happens from there?

16:49:42 16 A. So, once again, you can end the video, and once the video
16:49:46 17 ends, you have an option to -- to share it, to make it
16:49:51 18 available later. So, once again, in that case it would be
16:49:59 19 saved in its final form in a way so that people can access it
16:50:02 20 later. So it turns it into a video on demand.

16:50:06 21 Q. Thank you. And, briefly, can you take us through the
16:50:14 22 recipient's perspective of someone receiving an Instagram Live
16:50:18 23 video? Can you take us through that perspective?

16:50:21 24 A. Yeah. Again, you would see it either in your feed or
16:50:24 25 through some form of notification. You would accept or

16:50:27 1 click -- you know, push something and say, yep, I'll see the
16:50:30 2 video and it will pop up on your screen. And, again, you can
16:50:34 3 then see the video, and there are various ways of interacting.
16:50:38 4 You can comment. Instagram has this notion of badges, so like
16:50:48 5 you send people badges that you've bought. And that I think is
16:50:51 6 one of their newer systems for arranging for people who are
16:50:55 7 creating live videos to essentially be remunerated.

16:50:59 8 Q. And, to confirm, Instagram Live videos, can they be
16:51:02 9 received in the feed?

16:51:04 10 A. Yes. One of the ways that you would get them is they
16:51:07 11 would show up in your feed, like, here's a live video.

16:51:10 12 Q. And for the clarity of the record, is the feed also
16:51:13 13 referred to as the "news feed" in both Facebook and Instagram?

16:51:17 14 A. Yes. At least at times that's what it's referred to.

16:51:20 15 Q. Now, we've been focusing on the user's perspective for
16:51:23 16 Facebook Live and Instagram Live. I'd like to move under the
16:51:27 17 hood, so to speak. Are these two systems, are they implemented
16:51:31 18 using different systems?

16:51:33 19 A. No. They share the same fundamental architecture.
16:51:38 20 There's a few places where my understanding is they use, you
16:51:42 21 know, different servers for some tasks. Like if they're
16:51:45 22 keeping track of, you know, who you've identified to watch the
16:51:51 23 video, that those might be kept in different machines. But
16:51:55 24 this part that I'm showing, like the underlying architectural,
16:51:58 25 the step-by-step, they really share the same architecture and

16:52:03 1 they work and function in the same way.

16:52:05 2 Q. Okay. And what is the diagram?

16:52:10 3 A. So this is a diagram from one of the Facebook documents
16:52:16 4 that I examined in the course of the case. This is their --
16:52:20 5 you know, a description of what they call the media-streaming
16:52:24 6 pipeline. And it sort of shows the steps, shows the framework,
16:52:29 7 that's being used, you know, what I would call a description of
16:52:32 8 the architecture, that's used to manage and process videos.

16:52:38 9 Q. And, for the record, this diagram is from Exhibit P-14.

16:52:43 10 Did you create this diagram?

16:52:45 11 A. No. To be clear, again, this came from a Facebook
16:52:49 12 document, and I'm just using it to help in my explanation.

16:52:56 13 Q. Can you please walk the jury through what happens under
16:52:59 14 the hood when a user starts to record a Facebook or Instagram
16:53:03 15 live video?

16:53:04 16 A. Sure. So in -- in this picture, in this slide, things
16:53:10 17 start with the client. Okay. So the client is all the way on
16:53:14 18 the left over there. So the client -- where it says the client
16:53:19 19 here, that's the device that's creating the video. So you can
16:53:23 20 think of that as like that's my phone, and I'm starting to
16:53:27 21 record myself. That would be the client.

16:53:31 22 Q. Okay. What happens next in the flow from sender to
16:53:35 23 recipient?

16:53:35 24 A. Okay. So from the client it goes to the intake system of
16:53:42 25 Facebook. So the first thing it has to do is Facebook has to

16:53:45 1 essentially have some sort of intake process for the video.
16:53:49 2 That happens at -- they call that part of the system right
16:53:52 3 there "EdgeTee." So you can see we have the arrow going from
16:53:57 4 client to the EdgeTee. The A, slash, V my understanding is
16:54:00 5 that stands for audio/video.

16:54:03 6 There's some stuff underneath here, FBVP and RTMP.
16:54:10 7 Those refer to what are called network protocols. So that's
16:54:15 8 sort of the, you know, network language or the network system,
16:54:21 9 you know, how to format the data so that you can send it from
16:54:25 10 one to the other over the network.

16:54:27 11 FBVP should be sort of the Facebook Video Protocol.
16:54:35 12 That's something that they developed inside -- inside Facebook,
16:54:40 13 and, you know, someone will correct me or my lawyer will
16:54:43 14 correct me if I mess up an acronym. There are so many acronyms
16:54:49 15 in the case. But Facebook Video Protocol. RTMP is Real-time
16:54:53 16 Messaging Protocol. These are both protocols that are used to
16:54:57 17 transfer information from the client to the EdgeTee.

16:55:00 18 Q. What is a protocol in this situation? What does that
16:55:03 19 mean?

16:55:03 20 A. Yeah. So you can think of a protocol as sort of rules or
16:55:07 21 a language that is used to encode information so that both
16:55:11 22 sides sort of know what they're getting, so they know what the
16:55:15 23 setup is.

16:55:15 24 Q. Okay. And what happens in the next step of sending a
16:55:19 25 Facebook Live or Instagram Live video?

16:55:22 1 A. Okay. So EdgeTee goes to what they've marked here as
16:55:29 2 FBLS. That's the Facebook Live service or I also will refer to
16:55:35 3 as Facebook Live servers. So this is like, you know, sort of
16:55:39 4 the meat of where the Facebook processing, I guess, happens.
16:55:46 5 Like, after the intake stage, this is where they start to
16:55:50 6 manage and process the video and get it ready for consumption
16:55:54 7 for the people on the other side.

16:55:57 8 Q. Okay. And what happens next in this flow?

16:56:02 9 A. All right. So one of the things the Facebook Live servers
16:56:07 10 do, or the Facebook Live service does, is send things over to
16:56:11 11 up here we see something called the encoding service. Okay.
16:56:14 12 So the Facebook will get the video in some sort of format,
16:56:18 13 whatever format you set it up. Facebook wants to have it in
16:56:22 14 its own formats, or, in particular, it wants to, you, know have
16:56:27 15 some sort of standard format.

16:56:29 16 And it also, as we've talked about or will come into
16:56:33 17 issue with the claims, it will want to create different
16:56:37 18 versions of the video, these sort of multiple versions designed
16:56:42 19 for different possible devices on different network conditions
16:56:45 20 or different network settings.

16:56:47 21 So this is called the encoding service. That process
16:56:50 22 is, again, called transcoding. And, you know, so Facebook
16:56:54 23 takes it and puts it into, you know, these variety of formats.

16:57:00 24 Q. And what happens next?

16:57:03 25 A. Right. So after the encoding stage, the encoded videos

16:57:12 1 are sent to what over here we see is called CDN. That stands
16:57:17 2 for content delivery network. So a content delivery network is
16:57:24 3 generally a large collection of servers that's designed
16:57:28 4 specifically for the task of getting the video to the end
16:57:31 5 users. So it handles the task of connecting to the end users
16:57:37 6 who are going to get the video.

16:57:38 7 And, you know, as part of this sort of process,
16:57:41 8 somewhere in here you can see also down here on the bottom, you
16:57:45 9 know, these videos will get stored. So down here it says "oil
16:57:54 10 cache." The particular thing when you see one of these
16:57:57 11 cylinder type things in an architecture diagram, the standard
16:58:01 12 for that is that means storage. A cylinder is used to mean
16:58:05 13 storage. So that's memory. That's somewhere where things are
16:58:08 14 going to be stored.

16:58:09 15 Q. And to wrap up this flow, what is the final step in
16:58:13 16 sending to this player?

16:58:15 17 A. Right. So we see here selected video encoding, and that's
16:58:19 18 going to go to, you know, the other side, which is called the
16:58:23 19 player. It's called the player in this slide.

16:58:27 20 And there's two more things I want to quickly add.
16:58:30 21 First of all, I want to apologize. At times I'll also talk
16:58:32 22 about "client," and it's, like, the client usually refers or
16:58:38 23 often refers to, you know, sort of the program on your phone.
16:58:41 24 It's also called an application. So here it says player.
16:58:45 25 Sometimes I might use "client" to mean, yeah, and I'm meaning

16:58:49 1 the player. That's also a client.

16:58:51 2 The other thing I guess I want to point out is down

16:58:54 3 here again we see another protocol that's used. That's called

16:58:59 4 DASH. DASH stands for dynamic adaptive streaming over HTTP.

16:59:06 5 Okay. So that's another protocol that's used in particular to

16:59:11 6 send information, and frequently for streaming video

16:59:15 7 information, in order to get video information to users in a

16:59:20 8 timely and effective fashion. So that will also come up later

16:59:24 9 in our discussions.

16:59:25 10 Q. So just the player here refers to what?

16:59:30 11 A. Right. The player here refers to the device that's going

16:59:33 12 to play the video, the end user of it wanting to watch.

16:59:37 13 MR. STAKE: And I'm mindful of the hour. This would

16:59:41 14 be a good place to pick up tomorrow, I believe.

16:59:44 15 THE COURT: It appears that way. Ladies and

16:59:45 16 gentlemen, we'll take our evening recess at this time. Please

16:59:48 17 remember the instructions the court has previously given you:

16:59:52 18 Do not talk about this case among yourselves or with

16:59:55 19 anyone else. Do not read any publications that may contain any

17:00:01 20 information about this case. Do not listen to or observe any

17:00:03 21 radio or television news broadcasts that may have information

17:00:06 22 about this case. Do not attempt to find out anything about any

17:00:10 23 of the parties or the issues or anything about this case

17:00:13 24 through the means of any electronic device, and do not transmit

17:00:18 25 any information about this case to anyone through any

17:00:21 1 electronic device.

17:00:22 2 Please drive carefully. Be back in your jury room a
17:00:25 3 little bit before nine o'clock.

17:00:59 4 (Jury recessed)

17:00:59 5 THE COURT: Everybody good for the evening?

17:01:06 6 MR. VAN NEST: Your Honor?

17:01:06 7 THE COURT: I knew it was too good to be true.

17:01:11 8 MR. VAN NEST: Your Honor, following up on our
17:01:13 9 discussion earlier about Dr. Mitzenmacher, we'd like leave to
17:01:17 10 file a bench brief concerning prosecution waiver, IPR waiver,
17:01:26 11 estoppel. They should be estopped from asserting positions
17:01:31 12 inconsistent with that what they asserted in the IPR.

17:01:37 13 THE COURT: Has the plaintiff had an opportunity to
17:01:40 14 see the --

17:01:40 15 MR. VAN NEST: No.

17:01:40 16 THE COURT: All right. Then what I would like for
17:01:42 17 you to do is hang on to it. When can you give them a copy, and
17:01:47 18 when can you have a response to that?

17:01:49 19 MR. POWELL: Two days, Your Honor, I believe.

17:01:57 20 THE COURT: Yeah. I'd like to get something by the
17:02:00 21 close of business tomorrow. It may involve needing to call the
17:02:04 22 witness back. But if I'm going to get things during the middle
17:02:07 23 of trial, I'm not going to take them home and do them tonight.

17:02:14 24 MR. POWELL: And, Your Honor, we only saw this
17:02:14 25 argument a couple of days ago, and so we aren't even sure of

17:02:16 1 the exact argument that's going to be made.

17:02:18 2 THE COURT: Well, take a look at it. We'll take it

17:02:20 3 up before I bring the jury back in the morning and talk about

17:02:23 4 it a little bit.

17:02:23 5 MR. VAN NEST: Thank you, Your Honor.

17:02:24 6 All right. We done now?

17:02:28 7 MR. STAKE: Yes, Your Honor.

17:02:30 8 THE COURT: What?

17:02:31 9 MR. STONE: We're done.

17:02:33 10 MR. VAN NEST: And we are as well.

17:02:34 11 THE COURT: All right. We'll be in recess until

17:02:36 12 nine o'clock.

18:00:00 13 (End of transcript)

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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
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7 I certify that the transcript fees and format comply with
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10 WITNESS MY OFFICIAL HAND this the 18th day of
11 September 2022.

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